

Corrigé
Corrected

CR 2021/24

**International Court
of Justice**

**Cour internationale
de Justice**

THE HAGUE

LA HAYE

YEAR 2021

Public sitting

held on Monday 18 October 2021, at 10 a.m., at the Peace Palace,

President Donoghue presiding,

in the case concerning **Application of the International Convention on the Elimination
of All Forms of Racial Discrimination
(Azerbaijan v. Armenia)**

VERBATIM RECORD

ANNÉE 2021

Audience publique

tenue le lundi 18 octobre 2021, à 10 heures, au Palais de la Paix,

sous la présidence de Mme Donoghue, présidente,

*en l'affaire relative à l'***Application de la convention internationale sur l'élimination
de toutes les formes de discrimination raciale
(Azerbaïdjan c. Arménie)**

COMPTE RENDU

Present: President Donoghue
Vice-President Gevorgian
Judges Tomka
Abraham
Bennouna
Yusuf
Xue
Sebutinde
Bhandari
Robinson
Salam
Iwasawa
Nolte
Judges *ad hoc* Keith
Daudet
Registrar Gautier

Présents: Mme Donoghue, présidente
M. Gevorgian, vice-président
MM. Tomka
Abraham
Bennouna
Yusuf
Mmes Xue
Sebutinde
MM. Bhandari
Robinson
Salam
Iwasawa
Nolte, juges
MM. Keith
Daudet, juges *ad hoc*
M. Gautier, greffier

The Government of Azerbaijan is represented by:

H.E. Mr. Elnur Mammadov, Deputy Minister for Foreign Affairs, Republic of Azerbaijan,

as Agent;

Mr. Vaughan Lowe, QC, Emeritus Chichele Professor of Public International Law, University of Oxford, member of the Institut de droit international, member of the Bar of England and Wales,

Ms Catherine Amirfar, Debevoise & Plimpton LLP, member of the Bar of the State of New York,

Ms Laurence Boisson de Chazournes, Professor of International Law and International Organization at the University of Geneva, member of the Institut de droit international,

Ms Natalie Reid, Debevoise & Plimpton LLP, member of the Bar of the State of New York,

Mr. Donald Francis Donovan, Debevoise & Plimpton LLP, member of the Bar of the State of New York,

Lord Peter Goldsmith, QC, Debevoise & Plimpton LLP, member of the Bar of England and Wales,

as Counsel and Advocates;

H.E. Mr. Fikrat Akhundov, Ambassador of the Republic of Azerbaijan to the Kingdom of the Netherlands,

H.E. Mr. Vagif Sadigov, Ambassador of the Republic of Azerbaijan to the Kingdom of Belgium, Permanent Representative of the Republic of Azerbaijan to the European Union,

H.E. Mr. Rovshan Sadigbayli, Ambassador of the Republic of Azerbaijan to the Republic of Austria, Permanent Representative of the Republic of Azerbaijan to the Organization for Security and Co-operation in Europe and other international organizations in Vienna,

H.E. Mr. Kamil Khasiyev, Ambassador of the Republic of Azerbaijan to the Republic of Serbia,

Mr. Tofiq Musayev, Deputy Permanent Representative, Permanent Mission of the Republic of Azerbaijan to the United Nations,

Mr. Ismayil Asadov, Counselor, Embassy of Azerbaijan in the Russian Federation,

Ms Sabina Sadigli, First Secretary, Embassy of Azerbaijan in the Netherlands,

Mr. Chingiz Asgarov, Agent of the Republic of Azerbaijan before the European Court of Human Rights,

Mr. Erkin Alikhanov, Director of the International Legal Cooperation Department, Prosecutor General's Office of the Republic of Azerbaijan,

Le Gouvernement de l'Azerbaïdjan est représenté par :

S. Exc. M. Elnur Mammadov, ministre adjoint aux affaires étrangères de la République d'Azerbaïdjan,

comme agent ;

M. Vaughan Lowe, QC, professeur émérite de droit international public (chaire Chichele) à l'Université d'Oxford, membre de l'Institut de droit international, membre du barreau d'Angleterre et du pays de Galles,

Mme Catherine Amirfar, cabinet Debevoise & Plimpton LLP, membre du barreau de l'Etat de New York,

Mme Laurence Boisson de Chazournes, professeure au département de droit international et organisation internationale de l'Université de Genève, membre de l'Institut de droit international,

Mme Natalie Reid, cabinet Debevoise & Plimpton LLP, membre du barreau de l'Etat de New York,

M. Donald Francis Donovan, cabinet Debevoise & Plimpton LLP, membre du barreau de l'Etat de New York,

Lord Peter Goldsmith, QC, cabinet Debevoise & Plimpton LLP, membre du barreau d'Angleterre et du pays de Galles,

comme conseils et avocats ;

S. Exc. M. Fikrat Akhundov, ambassadeur de la République d'Azerbaïdjan auprès du Royaume des Pays-Bas,

S. Exc. M. Vagif Sadigov, ambassadeur de la République d'Azerbaïdjan auprès du Royaume de Belgique, représentant permanent de la République d'Azerbaïdjan auprès de l'Union européenne,

S. Exc. M. Rovshan Sadigbayli, ambassadeur de la République d'Azerbaïdjan auprès de la République d'Autriche, représentant permanent de la République d'Azerbaïdjan auprès de l'Organisation pour la sécurité et la coopération en Europe et d'autres organisations internationales sises à Vienne,

S. Exc. M. Kamil Khasiyev, ambassadeur de la République d'Azerbaïdjan auprès de la République de Serbie,

M. Tofiq Musayev, représentant permanent adjoint de la République d'Azerbaïdjan auprès de l'Organisation des Nations Unies,

M. Ismayil Asadov, conseiller à l'ambassade d'Azerbaïdjan en Fédération de Russie,

Mme Sabina Sadigli, première secrétaire, ambassade d'Azerbaïdjan aux Pays-Bas,

M. Chingiz Asgarov, agent de la République d'Azerbaïdjan devant la Cour européenne des droits de l'homme,

M. Erkin Alikhanov, directeur du département de coopération juridique internationale du parquet général de la République d'Azerbaïdjan,

Ms Aygun Bashirova, Chief of the Administrative and Military Standards Acts Office of the General Department of Legislation, Ministry of Justice of the Republic of Azerbaijan,

as Advisers;

Mr. Conway Blake, Debevoise & Plimpton LLP, solicitor advocate of the Senior Courts of England and Wales, and member of the Bar of the Eastern Caribbean Supreme Court,

Ms Elizabeth Nielsen, Debevoise & Plimpton LLP, member of the Bar of the State of New York,

Ms Ashika Singh, Debevoise & Plimpton LLP, member of the Bar of the State of New York,

Mr. Justin Rassi, Debevoise & Plimpton LLP, member of the Bar of the State of New York and lawyer of the Supreme Court of New South Wales,

Ms Rhianna Hoover, Debevoise & Plimpton LLP, member of the Bar of the State of New York,

Mr. Aditya Laddha, PhD candidate and assistant, University of Geneva,

Mr. Luke Tattersall, Barrister, Essex Court Chambers, London, member of the Bar of England and Wales,

as Counsel;

Ms Mary Grace McEvoy, Debevoise & Plimpton LLP,

Mr. Nakaba Egawa, Debevoise & Plimpton LLP,

Mr. Badir Bayramov, Ministry of Foreign Affairs,

as Assistants.

The Government of Armenia is represented by:

H.E. Mr. Yeghishe Kirakosyan, Representative of the Republic of Armenia before the European Court of Human Rights,

as Agent;

Mr. Sean Murphy, Manatt/Ahn Professor of International Law, The George Washington University Law School, member of the International Law Commission, associate member of the Institut de droit international, member of the Bar of Maryland,

Mr. Robert Kolb, Professor of Public International Law, University of Geneva,

Mr. Pierre d'Argent, Full Professor, Université catholique de Louvain, member of the Institut de droit international, president of the European Society of International Law, Foley Hoag LLP, member of the Bar of Brussels,

Mr. Lawrence H. Martin, Attorney at Law, Foley Hoag LLP, member of the Bars of the District of Columbia and of the Commonwealth of Massachusetts,

Mme Aygun Bashirova, cheffe du bureau des normes administratives et militaires du département général de la législation au ministère de la justice de la République d'Azerbaïdjan,

comme conseillers ;

M. Conway Blake, cabinet Debevoise & Plimpton LLP, *solicitor advocate* près les juridictions supérieures d'Angleterre et du pays de Galles, membre du barreau de la Cour suprême de la Caraïbe orientale,

Mme Elizabeth Nielsen, cabinet Debevoise & Plimpton LLP, membre du barreau de l'Etat de New York,

Mme Ashika Singh, cabinet Debevoise & Plimpton LLP, membre du barreau de l'Etat de New York,

M. Justin Rassi, cabinet Debevoise & Plimpton LLP, membre du barreau de l'Etat de New York et avocat près la Cour suprême de la Nouvelle-Galles du Sud,

Mme Rhianna Hoover, cabinet Debevoise & Plimpton LLP, membre du barreau de l'Etat de New York,

M. Aditya Laddha, doctorant et assistant à l'Université de Genève,

M. Luke Tattersall, cabinet Essex Court Chambers, membre du barreau d'Angleterre et du pays de Galles,

comme conseils ;

Mme Mary Grace McEvoy, cabinet Debevoise & Plimpton LLP,

M. Nakaba Egawa, cabinet Debevoise & Plimpton LLP,

M. Badir Bayramov, ministère des affaires étrangères,

comme assistants.

Le Gouvernement de l'Arménie est représenté par :

S. Exc. M. Yeghishe Kirakosyan, représentant de la République d'Arménie auprès de la Cour européenne des droits de l'homme,

comme agent ;

M. Sean Murphy, professeur de droit international titulaire de la chaire Manatt/Ahn à la faculté de droit de l'Université George Washington, membre de la Commission du droit international, membre associé de l'Institut de droit international, avocat inscrit au barreau du Maryland,

M. Robert Kolb, professeur de droit international public à l'Université de Genève,

M. Pierre d'Argent, professeur titulaire à l'Université catholique de Louvain, membre de l'Institut de droit international, président de la Société européenne de droit international, cabinet Foley Hoag LLP, membre du barreau de Bruxelles,

M. Lawrence H. Martin, avocat au cabinet Foley Hoag LLP, membre des barreaux du district de Columbia et du Commonwealth du Massachusetts,

Mr. Constantinos Salonidis, Attorney at Law, Foley Hoag LLP, member of the Bars of the State of New York and of Greece,

as Counsel and Advocates;

Ms Diana Tsutieva, Attorney at Law, Foley Hoag LLP, member of the Bars of the District of Columbia, the States of New Jersey and New York, and Paris,

Mr. Joseph Klingler, Attorney at Law, Foley Hoag LLP, member of the Bars of the District of Columbia and of the State of New York,

Mr. Peter Tzeng, Attorney at Law, Foley Hoag LLP, member of the Bars of the District of Columbia and of the State of New York,

Ms Natalia Tchoukleva, Attorney at Law, Foley Hoag LLP, member of the Bars of the District of Columbia and of the State of New York,

Ms Yasmin Al-Ameen, Attorney at Law, Foley Hoag LLP, member of the Bar of the State of New York,

Ms Nour Nicolas, Attorney at Law, Foley Hoag LLP, member of the Bar of the State of New York,

as Counsel;

H.E. Mr. Tigran Balayan, Ambassador of the Republic of Armenia to the Kingdom of the Netherlands,

H.E. Mr. Andranik Hovhannisyan, Ambassador, Permanent Representative of the Republic of Armenia to the United Nations Office and other international organizations in Geneva,

Mr. Liparit Drmeyan, Head of the Office of the Representative of the Republic of Armenia before the European Court of Human Rights, Office of the Prime Minister of the Republic of Armenia,

Ms Kristine Khanazadyan, Head of the Department for Representation of the Interests of the Republic of Armenia before International Courts and Tribunals, Office of the Prime Minister of the Republic of Armenia,

Ms Marta Ayvazyan, Advisor to the Minister for Foreign Affairs of the Republic of Armenia,

Mr. Igor Mirzakhanyan, Legal Expert at the Office of the Representative of the Republic of Armenia before the European Court of Human Rights, Office of the Prime Minister of the Republic of Armenia,

Mr. Aram Aramyan, Deputy Head of Department of International Legal Cooperation, Ministry of Justice of the Republic of Armenia,

Mr. Levon Gevorgyan, Director of the "International Law and Policy Centre" Foundation, member of the Bar of Armenia,

Ms Zoya Stepanyan, First Secretary, Permanent Mission of Armenia to the United Nations Office and other international organizations in Geneva,

Ms Sheila Paylan, Senior Research Fellow at the "International Law and Policy Center" Foundation, Expert in International Criminal and Human Rights Law,

M. Constantinos Salonidis, avocat au cabinet Foley Hoag LLP, membre des barreaux de l'Etat de New York et de Grèce,

comme conseils et avocats ;

Mme Diana Tsutieva, avocate au cabinet Foley Hoag LLP, membre des barreaux du district de Columbia, de l'Etat du New Jersey, de l'Etat de New York et de Paris,

M. Joseph Klingler, avocat au cabinet Foley Hoag LLP, membre des barreaux du district de Columbia et de l'Etat de New York,

M. Peter Tzeng, avocat au cabinet Foley Hoag LLP, membre des barreaux du district de Columbia et de l'Etat de New York,

Mme Natalia Tchoukleva, avocate au cabinet Foley Hoag LLP, membre des barreaux du district de Columbia et de l'Etat de New York,

Mme Yasmin Al-Ameen, avocate au cabinet Foley Hoag LLP, membre du barreau de l'Etat de New York,

Mme Nour Nicolas, avocate au cabinet Foley Hoag LLP, membre du barreau de l'Etat de New York,

comme conseils ;

S. Exc. M. Tigran Balayan, ambassadeur de la République d'Arménie auprès du Royaume des Pays-Bas,

S. Exc. M. Andranik Hovhannisyan, ambassadeur, représentant permanent de la République d'Arménie auprès de l'Organisation des Nations Unies et des autres organisations internationales à Genève,

M. Liparit Drmeyan, chef du bureau du représentant de la République d'Arménie auprès de la Cour européenne des droits de l'homme, cabinet du premier ministre de la République d'Arménie,

Mme Kristine Khanazadyan, directrice du département chargé de la représentation des intérêts de la République d'Arménie devant les juridictions internationales, cabinet du premier ministre de la République d'Arménie,

Mme Marta Ayvazyan, conseillère auprès du ministre des affaires étrangères de la République d'Arménie,

M. Igor Mirzakhanyan, expert juridique rattaché au bureau du représentant de la République d'Arménie auprès de la Cour européenne des droits de l'homme, cabinet du premier ministre de la République d'Arménie,

M. Aram Aramyan, directeur adjoint du département de la coopération juridique internationale, ministère de la justice de la République d'Arménie,

M. Levon Gevorgyan, directeur de la fondation International Law and Policy Center, avocat inscrit au barreau d'Arménie,

Mme Zoya Stepanyan, première secrétaire, mission permanente de l'Arménie auprès de l'Organisation des Nations Unies et des autres organisations internationales à Genève,

Mme Sheila Paylan, chargée de recherche principale à la fondation International Law and Policy Center, experte en droit pénal international et en droit international des droits de l'homme,

Mr. Karnig Kerkonian, Attorney at Law, Kerkonian Dajani LLP, Expert in Public International Law,
member of the Bar of Illinois,

as Advisers.

M. Karnig Kerkonian, avocat au cabinet Kerkonian Dajani LLP, expert en droit international public,
membre du barreau de l'Illinois,

comme conseillers.

The PRESIDENT: Please be seated. The sitting is open. The Court meets today and will meet tomorrow under Article 74, paragraph 3, of the Rules of Court, to hear the oral observations of the Parties on the Request for the indication of provisional measures submitted by the Republic of Azerbaijan in the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia)*. This morning, the Court will hear Azerbaijan's first round of oral argument.

Owing to the ongoing concerns and restrictions related to the COVID-19 pandemic, the Court has decided to hold these oral proceedings in a hybrid format, under Article 59, paragraph 2, of its Rules. The Court will continue to fulfil its mission through all means at its disposal, pending the normalization of the health situation.

The Court has taken great care to ensure the smooth conduct of this hybrid hearing. The Parties participated in technical tests prior to the opening of the hearings. These tests were comprehensive and included, for example, tests of the interpretation system and the process for displaying exhibits. However, while these tests reduce the risk of technical difficulties, they cannot eliminate them. In the event that we experience any such difficulty, such as a loss of audio input from a remote participant, I may have to interrupt the hearing briefly to allow the technical team to solve the problem.

In a hybrid hearing such as this one, all judges are able to view the speaker and any exhibits, regardless of whether they are in the Great Hall of Justice or joining via video link. I would like to note that the following judges are present with me in the Great Hall of Justice: Vice-President Gevorgian and Judges Tomka, Abraham, Yusuf, Xue, Sebutinde, Iwasawa and Nolte and Judge *ad hoc* Daudet; while Judges Bennouna, Bhandari, Robinson and Salam and Judge *ad hoc* Keith are participating by video link. For reasons duly made known to me, Judge Cançado Trindade is unable to sit with us in these oral proceedings, either in person or by video link.

For this set of hybrid hearings, the Parties were informed that they could each have up to four representatives present in the Great Hall of Justice at any one time and that the Court would make available, should a Party so desire, an additional room in the Peace Palace from which other members of each delegation could follow the proceedings via video link. The Parties were also informed that

participation by video link would be available to members of each delegation who would not be present in the Peace Palace.

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The Court does not include upon the Bench a judge of the nationality of either of the Parties. Accordingly, both Parties have availed themselves of the right, under Article 31, paragraph 3, of the Statute, to choose a judge *ad hoc* to sit in this case. Azerbaijan has chosen Judge Kenneth Keith, and Armenia, Professor Yves Daudet.

Article 20 of the Statute provides that “[e]very Member of the Court shall, before taking up his duties, make a solemn declaration in open court that he will exercise his powers impartially and conscientiously”. Pursuant to Article 31, paragraph 6, of the Statute, the same provision applies to judges *ad hoc*. Notwithstanding the fact that Judge Keith and Professor Daudet have already served as judges *ad hoc* and have made solemn declarations in previous cases, Article 8, paragraph 3, of the Rules of Court requires that they each make a further solemn declaration in the present case.

In accordance with custom, I shall first say a few words about the career and qualifications of each judge *ad hoc* before inviting them to make their solemn declarations.

Judge Kenneth Keith, who is a national of New Zealand, studied law at the University of Auckland, Victoria University of Wellington and the University of Harvard. He was a Member of this Court for nine years, from 2006 to 2015. His wide-ranging and illustrious career in the legal field includes vast experience as an academic, government lawyer and judge. Judge Keith is a Professor Emeritus at the Victoria University of Wellington, where he taught for more than 20 years, and is a member of the Institut de droit international. He was a member of the New Zealand legal team in the *Nuclear Test* cases before the International Court of Justice in 1973, 1974 and 1995, and was a leader of the New Zealand delegation to the Diplomatic Conference that prepared the additional Protocols to the Geneva Conventions in 1977. He also served in the New Zealand Department of External Affairs, as Director of the New Zealand Institute of International Affairs, and as President of the New Zealand Law Commission. Judge Keith also served as judge of the New Zealand Court of Appeal, of the newly established Supreme Court of New Zealand, and at various times as Judge of

Appeal in Samoa, the Cook Islands, Niue and Fiji. He was also a Member of the Judicial Committee of the Privy Council, London.

I shall now say a few words about the career and qualifications of Professor Daudet.

Professor Daudet, who is of French nationality, is a Doctor of Law and Professor (“agrégé”) in Public Law and Political Science. He is currently President of the Curatorium of the Hague Academy of International Law and Emeritus Professor at the University of Paris I (Panthéon-Sorbonne), where he has served as First Vice-President. Professor Daudet is an arbitrator in the Court of Conciliation and Arbitration within the Organization for Security and Co-operation in Europe. He has held a number of academic and research posts in France, Mauritius, Morocco and Côte d’Ivoire. He was a member of the French delegation to the United Nations Conference on the International Code of Conduct on the Transfer of Technology. He has been chosen as a judge *ad hoc* on numerous occasions and is currently sitting in the cases concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)* and *Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia)*. He also recently served as a judge *ad hoc* in the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)* and in the two cases concerning *Appeal[s] Relating to the Jurisdiction of the ICAO Council*, among others. Professor Daudet is a member of the Editorial Board of the *Annuaire français de droit international* and is a member of the French Society of International Law and the French branch of the International Law Association. He has published numerous books and articles in different areas of international law.

In accordance with the order of precedence fixed by Article 7, paragraph 3, of the Rules of Court, I shall first invite Judge Keith to make the solemn declaration prescribed by the Statute, and I would request all those present to rise. Judge Keith, you have the floor.

Judge *ad hoc* KEITH: Thank you, Madam President.

“I solemnly declare that I will perform my duties and exercise my powers as judge honourably, faithfully, impartially and conscientiously.”

Thank you.

The PRESIDENT: I thank you, Judge Keith. I now invite Professor Daudet to make the solemn declaration prescribed by the Statute.

Judge *ad hoc* DAUDET: Thank you, Madam President.

«Je déclare solennellement que je remplirai mes devoirs et exercerai mes attributions de juge en tout honneur et dévouement, en pleine et parfaite impartialité et en toute conscience.»

The PRESIDENT: I thank you, Professor Daudet. Please be seated. I take note of the solemn declaration made by Judge Keith and by Judge Daudet and I declare them duly installed as judges *ad hoc* in the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia)*.

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I shall now recall the principal steps of *the* procedure in the present case.

On 23 September 2021, the Republic of Azerbaijan filed in the Registry of the Court an Application instituting proceedings against the Republic of Armenia concerning alleged violations of the International Convention on the Elimination of All Forms of Racial Discrimination (which I shall refer to as “CERD”). To found the jurisdiction of the Court, Azerbaijan invokes Article 36, paragraph 1, of the Statute of the Court and Article 22 of CERD.

In its Application, Azerbaijan contends that Armenia has engaged and continues to engage in discriminatory acts against Azerbaijanis on the basis of their “national or ethnic” origin in furtherance of “an ethno-nationalist movement to create a mono-ethnic State comprised exclusively of ethnic Armenians in Armenia and in portions of Azerbaijan’s sovereign territory”. Azerbaijan claims that Armenia has committed serious violations of Articles 2, 3, 4, 5, 6 and 7 of CERD, including but not limited to what it describes as “engaging in a campaign of ethnic cleansing and other racial segregation”, “engaging in unlawful exploitation of Azerbaijan’s natural resources”, “preventing Azerbaijanis from accessing essential resources” and “fomenting ethnic hatred against Azerbaijanis”. Azerbaijan alleges that the Parties’ attempts to negotiate a settlement of its claims over the last

ten months have resulted in deadlock. Azerbaijan therefore requests the Court to hold Armenia accountable for its violations of CERD and redress the harm thereby caused.

Together with its Application, Azerbaijan also submitted a Request for the indication of provisional measures, referring to Article 41 of the Statute and Articles 73, 74 and 75 of the Rules of Court. According to Azerbaijan, the purpose of its Request is “to compel Armenia to abide by its international obligations under CERD and protect Azerbaijanis from the irreparable harm caused by Armenia’s ongoing conduct”, pending the Court’s determination of the case on the merits.

The Registrar will now read out the passage from the Request specifying the provisional measures which the Government of Azerbaijan is asking the Court to indicate. You have the floor, Mr. Registrar.

The REGISTRAR: Thank you, Madam President. I quote:

- “(a) Armenia shall take all necessary steps to enable Azerbaijan to undertake the prompt, safe and effective demining of the landmines laid in Azerbaijan’s territory by the Armenian military and/or other groups under the direction, control, or sponsorship of Armenia, including by immediately providing comprehensive and accurate information about the location and characteristics of landmines in Azerbaijan’s territory;
- (b) Armenia shall immediately cease and desist from endangering the lives of Azerbaijanis by planting or promoting or facilitating the planting of landmines in Azerbaijan’s territory;
- (c) Armenia shall take all necessary steps effectively to prevent organizations operating in Armenian territory, including the VoMA organization, from engaging in the incitement of racial hatred and racially-motivated violence targeted at Azerbaijanis, and immediately shall cease and desist incitement based on the fabrication of public and private hate speech attributed to Azerbaijanis on Twitter and other social media and traditional media channels;
- (d) Armenia shall take effective measures to collect, and to prevent the destruction and ensure the preservation of, evidence related to allegations of ethnically-motivated crimes against Azerbaijanis of which it is aware, including those identified in communications from the Republic of Azerbaijan;
- (e) Armenia shall refrain from any measure that might aggravate, extend, or make more difficult the resolution of this dispute; and
- (f) Armenia shall submit a report to the Court on all measures taken to give effect to its Order indicating provisional measures within three months, as from the date of the Order, and thereafter every six months, until a final decision on the case is rendered by the Court.”

The PRESIDENT: I thank the Registrar. Immediately after the Application and the Request for the indication of provisional measures were filed, the Registrar transmitted certified copies thereof to the Government of Armenia. He also notified the Secretary-General of the United Nations.

According to Article 74, paragraph 1, of the Rules of Court, a request for the indication of provisional measures shall have priority over all other cases. Paragraph 2 of the same provision states that the Court shall proceed to a decision on the request as a matter of urgency. This imperative must be balanced, however, with the need to fix the date of the oral proceedings in such a way as to afford the parties an opportunity of being represented at the hearings. Consequently, the Parties were informed that the date for the opening of the oral proceedings, during which they could present their observations on the Request for the indication of provisional measures, had been fixed for Monday 18 October 2021, at 10 a.m.

I would now like to welcome the delegations of the Parties. The Agent of Azerbaijan and the Agent of Armenia are present in the Great Hall of Justice. The Agents are accompanied by members of their respective State's delegations, some of whom are physically present in the Great Hall of Justice while others are participating in the hearings remotely.

For the purposes of this first round of oral argument, each of the Parties will have available to it a two-hour sitting. The Court will hear the oral argument of Azerbaijan, which has submitted this Request, this morning until 12 noon. It will then hear the first round of oral argument of Armenia this afternoon between 4 p.m. and 6 p.m. The Parties will then have the possibility to reply. Azerbaijan will have the floor again on Tuesday 19 October 2021 at 10 a.m., and Armenia will take the floor in turn on the same day at 5 p.m. Each of the Parties will have a maximum time of one hour in which to present its reply.

In this first sitting, Azerbaijan may, if required, avail itself of a short extension beyond 12 noon today, in view of the time taken up by these introductory remarks.

Before giving the floor to the Agent of Azerbaijan, I wish to draw the attention of the Parties to Practice Direction XI, which reads as follows:

“In the oral pleadings on requests for the indication of provisional measures parties should limit themselves to what is relevant to the criteria for the indication of provisional measures as stipulated in the Statute, Rules and jurisprudence of the Court. They should not enter into the merits of the case beyond what is strictly necessary for that purpose.”

I now give the floor to the Agent of Azerbaijan, His Excellency Mr. Elnur Mammadov. You have the floor, Your Excellency.

Mr. MAMMADOV:

I. INTRODUCTORY STATEMENT

1. Madam President, honourable Members of the Court, it is a great privilege to appear before you once again as the Agent of the Republic of Azerbaijan, and this time in person.

2. Last week, I provided an overview of the long and tragic history of ethnic cleansing perpetrated by Armenia against Azerbaijan. Today, I stand before you because Armenia's campaign of ethnic cleansing and incitement to violence against Azerbaijanis is ongoing and provisional measures are urgently required to prevent further irreparable harm to the rights of Azerbaijanis under CERD.

3. Because the past is prologue, it is necessary to understand some additional details about the historical context in order to understand why Armenia's continuing conduct warrants the indication of provisional measures now. After the expulsion of over 200,000 Azerbaijanis from Armenia's territory in the late 1980s, Armenia's ethnic cleansing campaign extended to Azerbaijan's sovereign territory¹. Indeed, just across town, here in The Hague, stands a monument to the infamous attack on Khojaly, which led to a massacre of ethnic Azerbaijanis of such brutality that it has been referred to as a crime against humanity and an act of genocide². Armenian forces encircled Khojaly, a town in the Garabagh region of Azerbaijan, and began bombarding it in the middle of the night, on 25 February 1992. When Azerbaijani civilians attempted to flee through the woods and into a nearby valley, they were targeted by Armenian forces, who intentionally slaughtered hundreds of them — man, woman and child, young and old — and took over a thousand hostage overnight.

4. The tragedy at Khojaly was not an isolated incident. Rather, it was the implementation of a deliberate policy and practice of ethnic cleansing. As Serzh Sargsyan, the former Prime Minister and President of Armenia, has said, “[b]efore Khojal[y] the Azerbaijanis thought that they were joking

¹ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia)*, Application of the Republic of Azerbaijan (hereinafter “Azerbaijan’s Application”), paras. 6-7.

² See e.g. Organization of Islamic Cooperation, Resolution No. 8/48-C on Affiliated Institutions, 18-19 Oct. 2016, para. 8.

with us, they thought that the Armenians were people who could not raise their hand against the civilian population. We needed to put a stop to all that. And that's what happened.”³

5. The list of such tragedies continues, to include the towns of: Garadaghly, in February 1992⁴; Aghdaban, in April 1992⁵; Balligaya, in August 1992⁶; Bashlibel, in April 1993⁷; Fuzuli, in August 1993⁸. I could go on. These were not military targets; these were towns populated by civilians, whose only crime in the eyes of the Armenian forces was that they were ethnically Azerbaijani. And for this reason alone, they were systematically massacred, taken hostage, tortured or expelled from their homes.

6. Armenia's campaign of ethnic cleansing before and during the First Garabagh War ultimately resulted in thousands of Azerbaijani civilians killed or injured and nearly one million forcibly displaced, including over 700,000 from the formerly occupied territories of Garabagh and surrounding districts of Azerbaijan⁹. The wounds of this almost 30-year-long occupation run deep — when Azerbaijan finally liberated these territories last year, it found: entire towns that had been inhabited by Azerbaijanis razed to the ground; land scarred by environmental devastation and pillaged of its natural resources; and thousands of cultural monuments and heritage sites destroyed¹⁰. In this way, Armenia had sought to cleanse these lands not only of Azerbaijani people but of all

³ Ann. 2, *Black Garden*, pp. 184-185. See also The Republican Party of Armenia (HHK), *Serge Sargsyan Biography*, available at <https://web.archive.org/web/20101218193545/>, http://hhk.am/eng/persons/serge_sargsyan.html.

⁴ See e.g. State Commission on Prisoners of War, Hostages and Missing Persons of the Republic of Azerbaijan, *Garadaghli Tragedy*, available at <http://human.gov.az/en/view-page/69/QARADA%C4%9ELI+Q%C6%8FTL%C4%B0AMI#.YDbcG1VKjvs>.

⁵ See e.g. Annex to the letter dated 14 September 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, *Statement by the Azerbaijani Community of the Nagorno-Karabakh region of the Republic of Azerbaijan on the twenty-eighth anniversary of the massacre of Azerbaijanis by Armenians in Aghdaban village (8 Apr. 2020)*, UN doc. A/74/808-S/2020/304; Annex to the Note Verbale dated 1 September 2020 from the Permanent Mission of Azerbaijan to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights (4 Sept. 2020), UN doc. A/HRC/45/G/3.

⁶ See e.g. State Commission on Prisoners of War, Hostages and Missing Persons of the Republic of Azerbaijan, *Balligaya Massacre*, available at <http://www.human.gov.az/en/view-page/98#.YCewZGgzbc>.

⁷ See e.g. Human Rights Watch/Helsinki, *Azerbaijan: Seven Years of Conflict in Nagorno-Karabakh* (1994).

⁸ Annex to the Letter dated 2 November 2000 from the Permanent Representative of Azerbaijan to the United Nations Office at Geneva addressed to the Secretariat of the Commission on Human Rights, *State Commission of the Republic of Azerbaijan on Prisoners of War, Hostages and Missing Persons, Information on human rights violations with respect to prisoners of war and hostages kept in Armenia and the Nagorny Karabakh region of Azerbaijan*, UN doc. E/CN.4/2001/107 (22 Nov. 2000), p. 4; Human Rights Watch/Helsinki, *Azerbaijan: Seven Years of Conflict in Nagorno-Karabakh*, 1994, pp. 114-115.

⁹ See e.g. United Nations, General Assembly resolution 48/114, *Emergency international assistance to refugees and displaced persons in Azerbaijan*, doc. A/RES/48/114 (23 Mar. 1994), p. 2.

¹⁰ Azerbaijan's Application, paras. 56-68.

traces of their presence, to ensure displaced Azerbaijanis would never, could never return, because there was nothing to return to.

7. But the only thing Armenia could not erase is memory: the memory of home for the hundreds of thousands of displaced Azerbaijanis who long to return. Some have attempted to do so after the liberation of these territories last November, only to discover, tragically, that Armenia actively continues to prevent their return through the use of landmines. Armenia not only carpeted these territories with landmines during its occupation, particularly in civilian areas formerly inhabited by Azerbaijanis; it still to this day refuses to share complete and accurate maps of the mines needed to progress clearance operations, and even continues to plant *new* mines on Azerbaijan's territory. As a result, at least 160 Azerbaijanis, including 65 Azerbaijani civilians, have been killed or injured since the Trilateral Statement of 10 November 2020 ended the Second Garabagh War.

8. There is no valid military or other reason for Armenia to continue to target and terrorize Azerbaijanis in this manner — this is, quite simply, a continuation of Armenia's decades-long ethnic cleansing campaign, an attempt to keep these territories "cleansed" of Azerbaijanis in pursuit of some desperate revanchist design. Provisional measures are warranted and urgently needed to protect against this dire threat.

9. In addition, Armenia continues to demonstrate that it cannot let go of its goal of a mono-ethnic Armenia that extends beyond its borders to Azerbaijan's territory — not only continuing to pursue the ethnic cleansing of Azerbaijanis to this end, but also continuing to incite hatred and violence against Azerbaijanis by harbouring armed hate groups and engaging in, sponsoring or supporting disinformation operations to spread false and inflammatory statements across social media. And Armenia has failed to investigate or prosecute not only these CERD violations, but *any* of the numerous credible allegations of racial discrimination against Azerbaijanis, including ethnically-motivated acts of torture and other war crimes committed during both wars and the occupation, some of which were captured on videos and widely disseminated on social and traditional media channels¹¹. But Armenia — unlike Azerbaijan — has not taken steps to preserve the evidence, investigate or otherwise bring the perpetrators of these vile hate crimes to justice.

¹¹ Azerbaijan's Application, paras. 42, 73-81.

10. As the drafters of CERD recognized, it is a short step from racist hate speech inciting violence to acts of violence carrying out those threats. Khojaly, Garadaghly, Aghdaban, Balligaya, Bashlibel, Fuzuli — I say these names again before the world’s highest court, not because Azerbaijan seeks today a remedy for past injustices, which it will address in later stages of this case, but because it seeks the Court’s urgent assistance to protect against the harm that continues. I say them here, today, because in the words of the great Azerbaijani poet Nizami Ganjavi, “[w]ithout speech the world has no voice¹²” — I say them to give voice to the victims so that perhaps, today, what was past need no longer be prologue.

11. Madam President, honourable Members of the Court, Azerbaijan’s distinguished counsel will now address our Request for provisional measures to explain why an order indicating each measure is warranted and urgently needed.

12. *First*, Professor Vaughan Lowe will discuss the Court’s prima facie jurisdiction and provide an overview of Azerbaijan’s Request.

13. *Second*, Ms Catherine Amirfar will address the need for provisional measures relating to the landmines laid by Armenia throughout the formerly occupied territories.

14. *Third*, Professor Laurence Boisson de Chazournes will explain the need for provisional measures relating to incitement of anti-Azerbaijani hatred and violence, including by Armenia’s failure to forestall the operation of racist hate groups within its territory and its engagement in cyber disinformation campaigns.

15. *Fourth*, Ms Natalie Reid will demonstrate the need for a provisional measure relating to the collection and preservation of evidence of ethnically-motivated crimes against Azerbaijanis.

16. *Finally*, Mr. Donald Francis Donovan will offer concluding observations as to why Azerbaijan’s Request for provisional measures should be granted.

17. Thank you, Madam President, honourable Members of the Court, for the privilege of appearing before you. I now kindly ask you, Madam President, to invite Professor Vaughan Lowe to address the Court.

¹² Extracts from Nizami Ganjavi’s poetry, OUDCE Islamic Mystical Poetry 2, available at <https://open.conted.ox.ac.uk/sites/open.conted.ox.ac.uk/files/resources/Create%20Document/Nizami.texts.pdf>.

The PRESIDENT: I thank the Agent of Azerbaijan for his statement. I now invite Professor Vaughan Lowe to take the floor.

Mr. LOWE: Thank you, Madam President.

II. THE FRAMEWORK FOR AZERBAIJAN'S PROVISIONAL MEASURES REQUEST

1. Madam President, Members of the Court: it is a privilege to appear before you and an honour to have been entrusted with the presentation of this part of the submissions of the Republic of Azerbaijan.

2. I shall address three points: the Court's prima facie jurisdiction in this case; the engagement of rights under the CERD; and the urgency of Azerbaijan's Request. *But* before I do, please let me make some initial observations.

3. Last week you heard a good deal from Armenia about the armed conflict in 2020 — the Second Garabagh War — and its aftermath, all events within the last 12 months. It no doubt suits Armenia's case to lift up only that small corner of the carpet: but lift up the carpet further and this case looks very different.

4. The median age in Azerbaijan is just over 30¹³. Or to put it another way, until last November about half of the population had never known a time when Armenia was not in military occupation of their country. Parents and grandparents could remember well Azerbaijani homes in Garabagh, but they could not go there.

5. From the Azerbaijani perspective, the central question in this provisional measures request is how long they must continue to suffer the consequences — the easily avoidable consequences — of that occupation.

6. Last week Ms Amirfar showed you something of Armenia's activities in laying landmines in the areas of Azerbaijan that it occupied. You will hear more today. As they are intended to do, those mines maim and kill those who step on them. They are indiscriminate — anyone going about

¹³ World Population Review, Azerbaijan Population 2021 (Live), available at <https://worldpopulationreview.com/countries/azerbaijan-population>.

their normal daily life can accidentally tread on them. It need not be a heavy foot: a child's footstep will do it.

7. All Azerbaijan wants is to remove the mines — quickly and safely, before they kill and maim more people. And it is hard to see that Armenia has any legitimate interest in obstructing this aim.

8. Armenia knows where the mines are. It has information, including maps, that show where the mines are. In June 2021, Armenia provided Azerbaijan with maps purportedly outlining the location of 189,000 anti-tank and anti-personnel mines. **And** the Armenian Prime Minister said that this was only “a tiny part” of the landmine maps which it possesses¹⁴. And even those turned out to be largely inaccurate.

9. Azerbaijan has asked, repeatedly, for detailed, comprehensive, and accurate information about the placement of the landmines. Tab 1 in your folders is an 11-page list of some of those requests. Azerbaijan has tried to negotiate the handover of that information, among other issues that limp on in the aftermath of the three-decades-long occupation. Others, including the EU, the Council of Europe, the OSCE, and the United States of America, have made the same calls for the handover of that information. But Armenia refuses to give it up.

10. That is how the case looks with the carpet lifted. And that is the question: must the people of Azerbaijan spend the years — until the Court rules on the merits of the case — picking their way through unmarked minefields while Armenia sits on the information that would enable the safe and prompt removal of those landmines?

11. It is against this backdrop that Azerbaijan requests the provisional measures set out on the slide¹⁵. The Request asks that the Court order Armenia to

(a) provide Azerbaijan with detailed and accurate maps of the hundreds of thousands of landmines which its military and those under its control have planted throughout Azerbaijan's territory;

¹⁴ Ann. 33, Speech by Nikol Pashinyan, posted on YouTube channel of NEWS AM (13 June 2021), available at <https://www.youtube.com/watch?v=7lbPymz14zQ> (certified translation), stating “a tiny part”, representing “only a portion” of Armenia's landmine maps were provided to Azerbaijan.

¹⁵ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (Azerbaijan v. Armenia), Request for the indication of provisional measures of protection of the Republic of Azerbaijan (hereinafter “Azerbaijan's Request”), para. 39.

- (b) cease its mining operations, which have been continuing as recently as May of this year, when a convert group of Armenians was arrested planting yet more mines in Azerbaijan's territory;
- (c) prevent organizations from operating in Armenia which incite and propagate racially motivated hate speech and encourage violence against Azerbaijanis;
- (d) prevent the destruction and ensure the preservation of evidence relevant to allegations of ethnically motivated crimes against Azerbaijanis of which it is aware, including those identified in communications from the Republic of Azerbaijan;
- (e) refrain from aggravating the resolution of the dispute; and lastly, to
- (f) report to the Court on the measures so ordered.

12. Armenia is currently engaged in activities in breach of paragraphs (a) to (e), and it has given no indication that it recognizes that it is bound by legal obligations to cease and desist from engaging in them.

13. Madam President, with those requests in mind, I turn to the question of prima facie jurisdiction.

A. Prima facie jurisdiction

14. There is no need to linger over the question whether there is a dispute between the Parties concerning the interpretation and application of the CERD. Azerbaijan's case is that Armenia is engaged in the practice of ethnic cleansing directed towards Azerbaijanis.¹⁶ It is hard to imagine a clearer, or more serious, accusation of a breach of the rights under CERD. My colleagues will take you to further details on this point; but that a dispute under CERD exists is, we believe, accepted by both Parties.

15. Then there is the precondition of negotiations, set out in CERD Article 22. Azerbaijan said last week that Armenia could not request provisional measures because it could not show that negotiations had failed or become futile. Armenia has not engaged with negotiations but has walked away from them and has turned instead to the Court. It cannot rely on its own wrongdoing in order

¹⁶ Azerbaijan's Application, para. 99.

to establish the jurisdiction of the Court. This principle is firmly established by a long line of authority¹⁷.

16. Azerbaijan is not relying on *its* own wrongdoing. It has pursued the possibility of a negotiated settlement on matters covered by the Request. It has put forward specific proposals on steps to be taken to address Armenia's claim. The documents underlying the negotiations are to be kept confidential and the Court has advised that they are not to be displayed or quoted in this hearing; but a number of such documents have been filed in evidence¹⁸.

17. You will see that exchanges began in November 2020¹⁹, but it was almost six months later, in late April this year, before the Parties agreed on the "modalities" of the negotiations²⁰, and it was July 2021 before discussions opened up to substantive questions. I invite the Court to review all of the documents that track the progress (or lack of progress) in the negotiations, but I mention three in particular:

- (a) *First*, the letter from the Armenian Minister for Foreign Affairs to Azerbaijan's Minister for Foreign Affairs, dated 11 November 2020²¹;
- (b) *Second*, the letter from Azerbaijan's Ministry of Foreign Affairs to Armenia's Minister for Foreign Affairs, dated 8 December 2020²²; and

¹⁷ B. Cheng, *General Principles of Law as applied by International Courts and Tribunals*, 1953, pp. 149-155, available at https://www.trans-lex.org/101100/_cheng-bin-general-principles-of-law-as-applied-by-international-courts-and-tribunals-reprinted-cambridge-1987/; *Jurisdiction of the Courts of Danzig, Advisory Opinion, 1928, P.C.I.J., Series B, No. 15*, pp. 26-27; *Factory at Chorzow (Germany v. Poland), Judgment, 1927, P.C.I.J., Series A, No. 9*, p. 31; *Temple of Preah Vihear (Cambodia v. Thailand), Merits, Judgment, I.C.J. Reports 1962*, separate opinion of Vice-President Alfaro, p. 40.

¹⁸ See Armenia, Anns. 10, 14, 15, 18-34, 36-46, 48-50, 57-61.

¹⁹ Armenia, Ann. 10, Letter from the Minister for Foreign Affairs of the Republic of Armenia to the Minister for Foreign Affairs of the Republic of Azerbaijan (11 Nov. 2020).

²⁰ Armenia, Ann. 44, *Note Verbale* from the Permanent Mission of the Republic of Armenia to the United Nations Office and other international organizations in Geneva to the Permanent Mission of the Republic of Azerbaijan to the United Nations Office and other international organizations in Geneva, No. 2203/0732/2020 (3 May 2021); Armenia, Ann. 45, *Note Verbale* from the Permanent Mission of the Republic of Azerbaijan to the United Nations Office and other international organizations in Geneva to the Permanent Mission of the Republic of Armenia to the United Nations Office and other international organizations in Geneva, No. 0181/27/21/25 (3 May 2021).

²¹ Armenia, Ann. 10, Letter from the Minister for Foreign Affairs of the Republic of Armenia to the Minister for Foreign Affairs of the Republic of Azerbaijan (11 Nov. 2020).

²² Armenia, Ann. 14, Letter from the Minister for Foreign Affairs of the Republic of Azerbaijan to the Minister for Foreign Affairs of the Republic of Armenia (8 Dec. 2020).

(c) *Third*, the letter outlining the proposals put forward by Azerbaijan to Armenia in the negotiations of 30-31 August 2021²³.

18. Azerbaijan submits that those three documents — borne out by the rest of the record — show that there was a very significant evolution in Azerbaijan’s position, made in its search for a negotiated solution to the matters in dispute. Azerbaijan made, in the words of the Court, “a genuine attempt . . . to engage in discussions with the other party, with a view to [settling] the dispute²⁴”. Azerbaijan satisfied the precondition of negotiations set out in CERD Article 22 with respect to its claims, even though Armenia, in its recalcitrance, did not do so with respect to its own.

19. Madam President, I turn next to the question whether the present dispute raises a plausible case concerning Azerbaijan’s rights under the CERD.

B. A plausible case

20. It appears, from last week’s hearing, to be common ground that the Court has the power to indicate provisional measures so long as it is satisfied that the rights asserted by the requesting party are at least plausible.

21. As my colleagues will explain in more detail, each of the provisional measures requested by Azerbaijan engages the rights under the CERD. Indeed, the claim to rights goes well beyond the threshold of “plausibility”.

22. Take, for example, the landmines laid by Armenia in the formerly occupied territories. By laying hundreds of thousands of mines throughout the Garabagh region and, as Ms Amirfar will detail in a moment, doing so deliberately in civilian areas previously home to ethnic Azerbaijanis, Armenia has made it impossible for them to return to their homes, although many wish to do so²⁵.

²³ Ann. 32, Letter from Vaqif Sadiqov, Head of Delegation of the Republic of Azerbaijan for negotiations under CERD, to Elnur Mammadov, Deputy Minister for Foreign Affairs, dated 9 October 2021, No. 0612/04/21/01.

²⁴ *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017*, p. 120, para. 43. Cf. *Appeal Relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar), Judgment. I.C.J. Reports 2020*, p. 111, para. 93.

²⁵ Parliamentary Assembly of the Council of Europe, Humanitarian consequences of the conflict between Armenia and Azerbaijan/Nagorno-Karabakh conflict, Resolution 2391 (2021), para. 14.4.

The Court will hear evidence that many have lost their lives since November 2020, and many more have been injured²⁶.

23. It is clear that Azerbaijan's rights under the CERD are being violated: Article 1 (1) of the CERD states that "racial discrimination" means

"any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life".

24. Ethnic cleansing amounts to a violation of just about every limb of that definition. It has both the purpose and effect of nullifying or impairing — to take some examples from the International Covenant on Civil and Political Rights — the right not to be arbitrarily deprived of life²⁷, the right to liberty and security of person²⁸, and the right to liberty of movement and freedom to choose one's residence²⁹.

25. CERD Article 2 obliges Armenia to "condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination" and requires that the State shall not engage in any "act or practice of racial discrimination against persons" or "groups of persons".

26. CERD Article 5 requires Armenia to guarantee the right to "security of person and protection" against "bodily harm, whether inflicted by government officials or by any individual, group or institution".

27. All of these CERD rights and obligations are clearly engaged in the present dispute by Armenia's conduct in relation to the landmines; and it is unnecessary to multiply the examples.

28. I could draw further examples from Armenia's cyber campaign of disinformation. This is a sophisticated and co-ordinated operation, designed to worsen relations between the two peoples. Twitter has documented that fake accounts have been created on its social media platform, and that

²⁶ See e.g. Ann. 27, Prosecutor General's Office of the Republic of Azerbaijan, *Civilian landmine casualty statistics* (11 Aug. 2021), available at <https://genprosecutor.gov.az/az/post/4008> (certified translation).

²⁷ International Covenant on Civil and Political Rights, Art. 6.1.

²⁸ International Covenant on Civil and Political Rights Art. 9.1.

²⁹ International Covenant on Civil and Political Rights Art. 12.

they are linked to the Government of Armenia³⁰. Accounts posing as Azerbaijani officials carried messages promoting hatred towards Armenians, in order to stir up anti-Azerbaijani sentiment. That is a plain violation of CERD Article 2, paragraph 1, and Article 4.

29. To take a third example, Armenia permits and, still worse, facilitates violent groups of extremists who propagate hate speech and promote violence towards Azerbaijanis. Professor Boisson de Chazournes will take the Court in detail through two examples of such groups, and show that members of at least one group have been invited by the Armenian Government to join its military efforts in the Garabagh region as “snipers”³¹. That, too, violates CERD Article 2, paragraph 1, and Article 4; and it is one of the factors that means that Armenia is breaching CERD Article 7.

30. It is, we submit, beyond doubt that there is a plausible case that the rights under the CERD are not only engaged, but are currently being violated. And my colleagues will take you through more evidence shortly.

C. Urgency

31. Finally, I turn to the urgency of Azerbaijan’s Request for provisional measures.

32. There is a good deal of common ground between the approaches of Armenia and Azerbaijan to the principles that govern this matter³². The two States agree that the continuing promotion of hatred against ethnic groups is making the resolution of this dispute more difficult, as these attitudes become engrained in new generations of citizens. Both States also agree that the infliction of death and maiming causes harm that is irreparable and that there is an urgent need for measures to avert such risks.

33. The disagreement is over the facts, and the practical need for such measures. Our criticisms of Armenia’s requests focused on the point that they were based upon mistaken facts, or were moot, or had no basis in any plausible right under CERD.

34. The landmines, the cyber campaign and the sponsorship of hate groups all present immediate and continuing threats and all are demonstrated by current evidence on file in this case.

³⁰ Twitter Safety, “Disclosing networks of state-linked information operations” (23 Feb. 2021), available at https://blog.twitter.com/en_us/topics/company/2021/disclosing-networks-of-state-linked-information-operations-.

³¹ See e.g. Ann. 35 to Azerbaijan’s Application, Voxj Mnalu Arvest (VoMA) Social Media Posts, p. 18 (certified translation).

³² CR 2021/20, pp. 57, 59, 62, paras. 8-9, 15, 29.

So, too, is the risk of the destruction of evidence relating to ethnically motivated crimes against Azerbaijanis. As my colleague Ms Natalie Reid will explain in detail, Armenia has failed to investigate and to preserve evidence of atrocities committed during the First Garabagh War, its 30-year occupation and the Second Garabagh War. While many of these breaches of Azerbaijanis' rights, including the examples set out at paragraph 28 of Azerbaijan's provisional measures Request, have been catalogued by independent third parties such as Human Rights Watch³³, it is still important that primary evidence be preserved for submission to State courts and other authorities, in order to allow Azerbaijanis to receive effective protection or remedies as required by CERD³⁴.

35. This includes evidence specifically in relation to unlawful executions, torture and mistreatment, desecration of deceased servicemen, and the indiscriminate planting of landmines in Azerbaijan's territory.

D. Conclusion

36. Madam President, honourable Members of the Court, I thank you for your attention and my colleagues will now address you in more detail on each of Azerbaijan's requests. That brings my submissions today to a close, and I ask that you now invite Ms Catherine Amirfar to the lectern.

The PRESIDENT: I thank Professor Lowe for his statement. I now invite Ms Catherine Amirfar to take the floor.

Ms AMIRFAR: Thank you, Madam President.

III. PROVISIONAL MEASURES ARE NECESSARY TO ADDRESS ARMENIA'S ONGOING CAMPAIGN OF ETHNIC CLEANSING AGAINST AZERBAIJANIS

1. Madam President, honourable Members of the Court, it is an honour to appear before you again on behalf of the Republic of Azerbaijan.

³³ See e.g. Human Rights Watch, "Armenia: Unlawful Rocket, Missiles Strikes on Azerbaijan" (11 Dec. 2020), available at <https://www.hrw.org/news/2020/12/11/armenia-unlawful-rocket-missile-strikes-azerbaijan>; Human Rights Watch, "Armenia: Cluster Munitions Kill Civilians in Azerbaijan" (30 Oct. 2020), available at <https://www.hrw.org/news/2020/10/30/armenia-cluster-munitions-kill-civilians-azerbaijan>.

³⁴ Azerbaijan's Request, para. 28.

2. I will address the first and second provisional measures requested. In its first request, Azerbaijan asks the Court to order Armenia to take all necessary steps to enable it to swiftly, safely and effectively demine the landmines laid in Azerbaijan's territory by Armenia. In its second request, Azerbaijan asks the Court to order Armenia to immediately cease and desist from its continued planting, promotion, or the facilitation of the planting, of landmines in Azerbaijan's territory.

3. In accordance with the Court's settled jurisprudence regarding the indication of provisional measures, I will speak to, in turn, the plausibility of the rights invoked, the link between those rights and the requested measures, and the imminent risk of irreparable prejudice to the rights in dispute.

A. The rights Azerbaijan seeks to protect are plausible

4. Each of Azerbaijan's first and second requests clearly, to use the Court's words, "concern plausible rights . . . under the CERD which require protection pending the final decision of the Court in the case"³⁵. With respect to plausibility, I will make three points. *First*, the acts complained of are part of Armenia's long-standing campaign of ethnic cleansing, deliberately targeting the previously-expelled ethnic Azerbaijani population to prevent them from returning home to the formerly Occupied Territories. *Second*, Armenia's acts constitute acts of racial discrimination as defined in Article 1 (1) of CERD, because they have both the purpose and the effect of depriving Azerbaijanis of their equal enjoyment of fundamental rights. *Third*, Armenia's conduct violates its obligations, and the rights protected, under Articles 2 and 5 of CERD.

5. To my *first* point: as you heard last week, Armenia has laid hundreds of thousands of landmines in the formerly Occupied Territories. Many of Armenia's landmines have been laid specifically and deliberately in civilian areas — with no conceivable military objective — for the very purpose of preventing the return home of the hundreds of thousands of Azerbaijanis displaced from those areas by Armenia's systematic campaign of ethnic cleansing. Armenia's ongoing refusal to enable the clearing of these deadly landmines is just the latest chapter in that campaign. As it stands today, this region is among the most contaminated and dangerous landmine zones in the entire

³⁵ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order of 14 June 2019, I.C.J. Reports 2019 (I), p. 370, para. 26.*

world and without the Court's urgent intervention, it is estimated that it would take *up to a decade* to clear these landmines to allow Azerbaijanis to return safely home³⁶.

6. So how did this tragic state of affairs come about? Armenia's ethnic cleansing campaign began in the late 1980s, when Armenia forcibly expelled more than 200,000 ethnic Azerbaijanis from Armenia³⁷. And it only intensified during the First Garabagh War, which resulted in Armenia's decades-long occupation of nearly 20 per cent of Azerbaijani territory, and the expulsion and murder of the Azerbaijanis living there. Between 1991 and 1994, Armenia expelled more than 700,000 Azerbaijanis from the formerly Occupied Territories, historically Daghygh Garabagh and the seven surrounding districts of Azerbaijan. These surrounding districts at the time were home to a population that was 98 per cent ethnic Azerbaijani³⁸. This population has remained internally displaced for nearly three decades.

7. As part of its campaign of ethnic cleansing, Armenia deliberately planted hundreds of thousands of landmines in the formerly Occupied Territories during occupation, then as Armenian forces retreated, and even *after* the cessation of hostilities in November 2020.

8. The Mine Action Agency of the Republic of Azerbaijan ("ANAMA"), an Azerbaijani agency formed with the support of the United Nations Development Programme, is charged with the critical task of making the formerly Occupied Territories safe for displaced Azerbaijanis to return home. ANAMA prepared the map that you see on your screen based on its technical survey process and estimates³⁹. This map illustrates the pervasive pattern of Armenia's landmine contamination in the formerly Occupied Territories. The areas of high contamination, noted in red on the map, cut across the former line of contact — an area in close proximity to densely populated regions of Azerbaijan as represented by the black dots indicating the towns, settlements and villages.

³⁶ J. Aliyev, "Azerbaijan clears mines from areas freed in Karabakh", Andalou Agency (29 Nov. 2020), available at <https://www.aa.com.tr/en/azerbaijan-front-line/azerbaijan-clears-mines-from-areas-freed-in-karabakh/2059833>.

³⁷ Azerbaijan's Application, para. 6.

³⁸ Azerbaijan's Application, para. 13. See also Parliamentary Assembly Council of Europe resolution 1416, The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference (2005), para. 2, available at <https://pace.coe.int/pdf/054535b64a8c8db462e36c55fd37d805120c5634eefb777b2aa00391ceb35fda/resolution%201416.pdf>.

³⁹ Ann. 32, Mine Action Agency of the Republic of Azerbaijan, Assistance Required for the Republic of Azerbaijan in Humanitarian Mine Action for Safe Reconstruction and Return of IDPs to the Conflict Affected Territories of Azerbaijan (2021).

9. Landmines also contaminate the land *throughout* the formerly Occupied Territories in the districts — that is, the civilian areas — where the population was overwhelmingly Azerbaijani *before* Armenia’s ethnic cleansing campaign. Before you is the same map prepared by ANAMA, overlaid with the populations of ethnic Azerbaijanis that were displaced from each of the regions represented. The criss-crossing areas coloured orange and yellow on the map before you — indicating medium and low landmine contamination — are far from the theatre of active hostilities, far from any legitimate military target. The pattern of placement of the landmines renders any attempted return especially deadly. ANAMA’s work has confirmed that Armenia planted mines on access roads to cities in and around the formerly Occupied Territories, as well as “agriculture fields, graveyards, gardens, and other areas of social and economic utility”⁴⁰. This deliberate endangerment of civilian lives demonstrated Armenia’s commitment to prevent any safe return after the end of hostilities.

10. As of June 2021, ANAMA had removed 34,590 mines⁴¹, as reflected in the internal report of 11 June 2021 that is in your folders at tab ³⁴². ANAMA’s survey documented mines throughout the formerly Occupied Territories, as displayed on the map now on your screen. ANAMA found that as they withdrew, Armenian forces had planted landmines in cities and villages in the Zangilan, Gubadli, Jabrayil, Khojavend districts and in Dashalti village of Shusha city⁴³. As the map shows, and ANAMA catalogued, these towns and villages were far away from the line of contact. Photographs in the report also record the civilian areas in which these mines were found, including in ruined Azerbaijani graveyards in Ahmedavar village in Aghdam and open fields in Xanlıq village, Gubadli and Ashaghi Ayrim village, in Kalbajar.

11. The deliberate placement of these mines, including concealed under tumbled gravestones, has no conceivable military objective or justification. In particular, based on its observations that the landmines also were “buried in fields utilized in the past 3-5 years for agricultural purposes”⁴⁴,

⁴⁰ Ann. 32, Mine Action Agency of the Republic of Azerbaijan, Assistance Required for the Republic of Azerbaijan in Humanitarian Mine Action for Safe Reconstruction and Return of IDPs to the Conflict Affected Territories of Azerbaijan (2021), p. 2.

⁴¹ Judges’ folder, tab 3, Ann. 36, Letter from Vugar Suleymanov, Chairman of the Board of the Mine Action Agency of the Republic of Azerbaijan, to Fuad Alasgarov, Head of the Department for Work with Law Enforcement Bodies of the Presidential Administration of the Republic of Azerbaijan, dated 11 June 2021, No. 414/M, p. 2.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

ANAMA ultimately concluded that Armenia had “deliberately mined” these civilian areas “during the forced withdrawal”⁴⁵. Like Armenia’s other destructive acts in the formerly Occupied Territories, including its devastation of the natural environment and razing of villages, towns and cities, Armenia’s salting of the earth with deadly landmines in these civilian areas is designed to deter return by the displaced ethnic Azerbaijani population.

12. The threat posed by Armenia’s landmines is not an idle one: approximately 3,000 Azerbaijanis were maimed or killed by landmines from 1999 to present⁴⁶. And as documented in your folder at tab 4, at least 160 Azerbaijanis⁴⁷, including 65 Azerbaijani civilians⁴⁸, have been killed or injured by landmines since the cessation of hostilities last November.

13. The positions Armenia has taken are not political theatre; they are calculated to intimidate and prevent Azerbaijanis from returning. Make no mistake: although Armenia initially denied possessing any landmine maps — calling Azerbaijan’s requests for them a “fake agenda”⁴⁹ as recently as April of this year — Armenia finally *admitted* in June 2021 that it does indeed possess such maps⁵⁰. But as its Prime Minister also admitted, Armenia has refused to share anything but a “tiny part”⁵¹ of the landmine location information in its possession. Instead, regardless of the innocent

⁴⁵ Judges’ folder, tab 3, Ann. 36, Letter from Vugar Suleymanov, Chairman of the Board of the Mine Action Agency of the Republic of Azerbaijan, to Fuad Alasgarov, Head of the Department for Work with Law Enforcement Bodies of the Presidential Administration of the Republic of Azerbaijan, dated 11 June 2021, No. 414/M, p. 2.

⁴⁶ “535 people died as a result of mine explosions within 21 years”, Defence.az (30 Nov. 2020), available at http://defence.az/en/news/149267?_cf_chl_managed_tk__=pmd_tknf2GxfTMEvknpl_4WRZbQTxYcxjGwMAM2_niFYb8o-1634076592-0-gqNtZGzNAyWjcnBszQ0R. See also Ann. 37, Letter from Elchin Mammadov, First Deputy Prosecutor General, to Elnur Mammadov, Deputy Minister for Foreign Affairs regarding civilians killed or injured by landmines, dated 6 Oct. 2021, No. 14/çix66-21 (with enclosures) (certified translation).

⁴⁷ Twitter post, “Regarding 300 days since the Trilateral Statement”, @AzerbaijanMFA (6 Sept. 2021 at 6.33 a.m.), available at <https://twitter.com/AzerbaijanMFA/status/1434751573272506369>.

⁴⁸ Judges’ folder, tab 4, Ann. 37, Letter from Elchin Mammadov, First Deputy Prosecutor General, to Elnur Mammadov, Deputy Minister for Foreign Affairs regarding civilians killed or injured by landmines, dated 6 Oct. 2021, No. 14/çix66-21 (with enclosures) (certified translation).

⁴⁹ Ministry of Foreign Affairs of the Republic of Armenia, “The answer of the MFA Spokesperson Anna Naghdalyan to the questions of the journalists regarding the Azerbaijani allegations on minefield maps” (6 Apr. 2021), available at https://www.mfa.am/en/interviews-articles-and-comments/2021/04/06/spox_journalists_answer/10885.

⁵⁰ See e.g. Ann. 33, Extract from Speech by Nikol Pashinyan, posted on YouTube channel of NEWS AM (13 Jun. 2021), available at <https://www.youtube.com/watch?v=71bPymz14zQ>; J. Kucera, “Armenia and Azerbaijan exchange detainees for mine maps”, Eurasianet (12 Jun. 2021), available at <https://eurasianet.org/armenia-and-azerbaijan-exchange-detainees-for-mine-maps>.

⁵¹ Ann. 33, Speech by Nikol Pashinyan, posted on YouTube channel of NEWS AM (13 Jun. 2021), available at <https://www.youtube.com/watch?v=71bPymz14zQ> (certified translation).

lives lost and the ever-present danger, Armenia would provide further information only if Azerbaijan immediately released Armenian detainees convicted of committing crimes or awaiting trial⁵².

14. Notably, even that “tiny part” of maps Armenia has provided largely has been useless to mine clearing efforts. The maps provided only cover three of seven districts, as shown on the map on the screen, leaving over half of the formerly Occupied Territories without information. And the information that was provided is clearly inadequate — almost half of the information received from Armenia is incomplete, while one quarter is either completely inaccurate or contains no information pertinent to demining⁵³. By intentionally withholding comprehensive and accurate information about its mine placement, Armenia all but assures that the displaced Azerbaijani population will continue to be unable to safely return to their homes in the formerly Occupied Territories⁵⁴.

15. Moreover, Armenia *continues to plant* landmines in Azerbaijan’s territory. As recently as 27 May 2021, over *six months* after the cessation of hostilities, Azerbaijan detained a reconnaissance and sabotage group of the Armenian Armed Forces who were attempting to plant landmines in Azerbaijan’s territory⁵⁵. Armenia’s Prime Minister did admit that very same day that “[m]ining work was carried out”⁵⁶, even as he denied that it was on Azerbaijan’s territory.

16. In short, Armenia’s deliberate mine contamination in and around the formerly Occupied Territories, and its continued refusal to facilitate the clearance of those mines, are an integral part of its campaign targeting Azerbaijanis for ethnic cleansing in those territories based on their national or ethnic origin.

⁵² See the Prime Minister of the Republic of Armenia, “Sovereignty of Armenia, protection of the rights of the Armenians of Nagorno-Karabakh, including right to self-determination are among our priorities” (3 Oct. 2021), available at <https://www.primeminister.am/en/press-release/item/2021/10/03/Nikol-Pashinyan-visit-to-Lithuania/>.

⁵³ Annex to the Letter dated 9 Aug. 2021 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN doc. A/75/986-S/2021/721 (12 Aug. 2021), p. 2, available at <https://undocs.org/en/A/75/986>.

⁵⁴ See Azerbaijan’s Request, para. 11.

⁵⁵ Ministry of Foreign Affairs of the Republic of Azerbaijan, No. 191/21, “Information of the Press Service Department of the Ministry of Foreign Affairs of the Republic of Azerbaijan on the next provocation of the armed forces of Armenia along the border in the direction of the Kalbajar region” (2021), available at <https://mfa.gov.az/en/news/no19121-information-of-the-press-servicedepartment-of-the-ministry-of-foreign-affairs-of-the-republic-ofazerbaijan-on-the-next-provocation-of-the-armed-forces-of-armeniaalong-the-border-in-the-direction-of-the-kalbajar-region-enru>; Ministry of Defense of the Republic of Azerbaijan, “Armenia committed a provocation in the direction of the Kalbajar region of the state border” (27 May 2021), available at <https://mod.gov.az/en/news/armeniacommitted-a-provocation-in-the-direction-of-the-kalbajar-region-ofthe-state-border-36046.html>. See also Azerbaijan’s Request, para. 15.

⁵⁶ Ann. 57, “Armenian soldiers were not taken prisoner, they were abducted from the territory of Armenia — Pashinyan commenting on the incident on the border with Azerbaijan”, RFE/RL (27 May 2021) (certified translation). See also “Azerbaijan Captures Six Armenian Soldiers In Latest Border Incident”, RFE/RL (27 May 2021), available at <https://www.rferl.org/a/azerbaijan-captures-armenia-soldiers/31276052.html>.

17. *Second*, Armenia's acts plausibly constitute racial discrimination within the meaning of Article 1 (1) of CERD. As the Court has confirmed, "the Convention prohibits all forms and manifestations of racial discrimination, whether arising from [its] *purpose* . . . or from its *effect*"⁵⁷. Here, Armenia's acts had both the purpose *and* the effect of impairing the equal enjoyment and exercise of fundamental rights of Azerbaijanis "as a distinct social group" based on "their national [or ethnic] origin"⁵⁸.

18. To begin with, the location and placement of Armenia's landmines make their discriminatory purpose clear. As noted, Armenia's placement of these mines in clearly civilian areas, its ongoing refusal to provide crucial information in its possession, deliberately targets ethnic Azerbaijanis and seeks to ensure that the formerly Occupied Territories remain "cleansed" of the population it expelled 30 years ago.

19. Tragically, the evidence before the Court, and the lived experience of many Azerbaijanis, confirms that Armenia's discriminatory acts have also had their intended effect. The Parliamentary Assembly of the Council of Europe noted in its resolution of 27 September 2021 that a great challenge for "Azerbaijan is the return of the 650,000 displaced from the 1991-1994 war and that 65% of these displaced persons would like to return to their homelands"⁵⁹. Yet as a result of Armenia's deliberate and continued mine contamination, heavily concentrated in formerly Azerbaijani population centres, these hundreds of thousands of displaced Azerbaijanis are forced to remain in exile from their homes, on pain of death or injury. Where Azerbaijani families have chosen to take the risk in seeking to return to their former homes, they have suffered terrible loss and horrific injuries⁶⁰. Hundreds of thousands more remain displaced in fear of death or serious injury, perpetuating the wrongs of Armenia's decades-long campaign of ethnic cleansing.

⁵⁷ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Preliminary Objections, Judgment of 4 February 2021*, para. 112; emphasis added.

⁵⁸ *Ibid.*

⁵⁹ Parliamentary Assembly of the Council of Europe, Humanitarian consequences of the conflict between Armenia and Azerbaijan/Nagorno-Karabakh conflict, resolution 2391 (2021), para. 14.4.

⁶⁰ Ann. 37, Letter from Elchin Mammadov, First Deputy Prosecutor General, to Elnur Mammadov, Deputy Minister for Foreign Affairs, regarding civilians killed or injured by landmines, dated 6 Oct. 2021, No. 14/çix66-21 (with enclosures) (certified translation).

20. *Third*, the specific rights under CERD that Azerbaijan invokes in connection with its request are “at least plausible”⁶¹. The purposeful conduct I have described on the part of Armenia violates multiple substantive obligations under CERD.

21. These include Article 2, which requires Armenia to refrain from engaging in any “act or practice of racial discrimination against persons, groups of persons or institutions”, and correspondingly grants Azerbaijanis the right to be free of such discrimination, both individually and as a group. Armenia’s conduct also violates its obligations under Article 5, which requires Armenia to “eliminate racial discrimination in all its forms” and to guarantee the enjoyment of a non-exhaustive list of protected rights without discrimination. These include the right to “security of person and protection by the State against violence or bodily harm” in Article 5 (*b*); the right to “freedom of movement and residence within the border of the State” in Article 5 (*d*) (i); and the right to “leave any country, including one’s own, and to return to one’s country” in Article 5 (*d*) (ii).

22. For the reasons I have just discussed, the evidence submitted demonstrates that Armenia has deprived Azerbaijanis of their equal enjoyment of these rights through its programme of mine contamination, which continues to prevent Azerbaijanis from returning home to the formerly Occupied Territories and exposes them to risks of death or serious bodily injury should they attempt to do so.

23. Azerbaijan thus respectfully submits that each of the first two requested measures easily concern rights under CERD that are plausible.

B. The rights Azerbaijan seeks to protect are linked to the provisional measures requested

24. I turn now to the second requirement, that “a link must exist between the rights whose protection is sought and the provisional measures being requested”⁶².

⁶¹ See e.g. *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018 (II)*, p. 442, para. 43; *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017*, p. 126, para. 63.

⁶² See e.g. *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America), Provisional Measures, Order of 3 October 2018, I.C.J. Reports 2018 (II)*, p. 639, para. 54.

25. On this I can be brief. Azerbaijan's first and second requested measures are clearly linked to the rights under CERD that it seeks to protect. Azerbaijan asks the Court, first, to order Armenia to take all steps to facilitate the clearing of landmines planted in its territory, namely through disclosing complete and accurate information regarding the locations of landmines throughout the formerly Occupied Territories, and second, to order Armenia to cease planting landmines within Azerbaijan.

26. Each of these measures is aimed at preventing Armenia from carrying out discriminatory acts that perpetuate Armenia's campaign of ethnic cleansing against Azerbaijanis in the formerly Occupied Territories. The High Representative of the European Union for Foreign Affairs and Security Policy recently underscored that Armenia's "handing over of *all* available maps of mined areas" is crucial to "avoid further civilian casualties"⁶³. Indeed, the Commissioner for Human Rights of the Council of Europe also stressed the "urgent need to demine the areas affected by the conflict"⁶⁴, and the OSCE Minsk Group co-chairs reiterated the need for the "exchange of *all* data necessary to conduct effective demining"⁶⁵.

27. In short, the requested measures are critical to facilitate the return of displaced Azerbaijanis to their homes and communities in the formerly Occupied Territories, and are thus aimed at safeguarding the specific rights under Articles 2 and 5 that Azerbaijan asserts under CERD.

C. The requested provisional measures are urgently needed to prevent irreparable harm to the rights of Azerbaijanis

28. Finally, the requested measures meet the requirement of urgency because there is a real and imminent risk that irreparable prejudice will be caused to the rights in dispute pending the Court's final decision⁶⁶.

⁶³ Delegation of the European Union to Angola, Armenia/Azerbaijan: Statement by High Representative Josep Borrell on the latest developments (13 June 2021), available at https://eeas.europa.eu/delegations/angola/99984/armeniaazerbaijanstatement-high-representative-josep-borrell-latest-developments_en.

⁶⁴ Twitter post, "Regarding 4 June Landmine Explosion", @CommissionerHR (4 June 2021 at 9.39 a.m.), available at <https://twitter.com/CommissionerHR/status/1400809475804745734?s=20>.

⁶⁵ OSCE Minsk Group, Statement by the Co-Chairs of the OSCE Minsk Group (13 Apr. 2021), available at <https://www.osce.org/minskgroup/483416>; emphasis added.

⁶⁶ *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016 (II)*, para. 82, cited in *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017*, p. 136, paras. 88-89.

29. One is hard pressed to think of a greater demonstration of urgency and irreparable harm than the prospect of even more innocent lives lost, and even more people seriously injured by triggering landmines, when such loss and injury could be prevented by the measure requested.

30. The Court has previously indicated provisional measures in three cases to protect fundamental rights under CERD. In each of these cases, the Court has recognized that there are rights under CERD, to quote the Court in *Ukraine v. Russia*, which “are of such a nature that prejudice to them is capable of causing irreparable harm”⁶⁷. The Court recognized this *explicitly* with respect to the specific rights at risk for each of Azerbaijan’s requests, namely Articles 5 (b), 5 (d) and 5 (e).

31. In *Georgia v. Russia*, for example, the Court found that “violations of the right to security of persons and of the right to protection by the State against violence or bodily harm . . . could involve potential loss of life or bodily injury and could therefore cause irreparable prejudice”⁶⁸. The Court also found in that case that “violations of the right to freedom of movement and residence within a State’s borders . . . could also cause irreparable prejudice in situations where the persons concerned are exposed to privation, hardship, anguish and even danger to life and health”⁶⁹. And the Court likewise concluded that “individuals forced to leave their own place of residence and deprived of their right of return could, depending on the circumstances, be subject to a serious risk of irreparable prejudice”⁷⁰. Every one of these circumstances applies in this case.

32. Armenia’s continuing violations of rights protected under CERD expose Azerbaijanis to the potential loss of life and risk of injury, deprive them of their right of return to their homes, and give rise to hardship and anguish. Azerbaijanis thus have already suffered and continue to suffer and be at a serious risk of irreparable prejudice based on Armenia’s conduct.

⁶⁷ *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017*, p. 138, para. 96; see *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018 (II)*, pp. 430-431, para. 67; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008*, p. 396, para. 142.

⁶⁸ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008*, p. 396, para. 142.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

33. In addition, there is a real and imminent risk that this irreparable prejudice will occur prior to the Court's decision on the merits. In its Order for provisional measures in *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, the Court found that such a risk exists when "the acts likely to cause such a prejudice . . . could occur at any moment"⁷¹. The Court reaffirmed this conclusion in its recent Order for provisional measures in *The Gambia v. Myanmar*⁷². The Court has thus repeatedly found that the risk of irreparable harm is real and imminent where the affected group "appears to remain vulnerable" to human rights violations⁷³. And it has repeatedly concluded this to be the case where there is evidence that such violations are ongoing, or past actions create a situation such that "the impact on those affected seem to persist to this date"⁷⁴.

34. It is difficult to conceive of a greater demonstration of current and urgent vulnerability than the prospect of further loss of life and injury due to the landmines, as well as the ongoing violation of the rights of Azerbaijanis to return to their homes and go safely about their daily lives. Despite Azerbaijan's best efforts to clear as many landmines as quickly as possible, the number of landmine casualties continues to rise. At the current rate of mine clearance and given the sheer number of mines planted by Armenia, ANAMA estimates that this tragic circumstance will last *for potentially up to a decade*⁷⁵. That is because, as the Parliamentary Assembly of the Council of Europe

⁷¹ *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016 (II), p. 1169, para. 90

⁷² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020, p. 24, para. 65.

⁷³ See *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018 (II), p. 431, para. 67; *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017, p. 138, para. 96; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020, pp. 26-27, para. 72; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008, p. 396, para. 143.

⁷⁴ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018 (II), p. 431, para. 68. See also *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020, pp. 27-28, paras. 73-74.

⁷⁵ R. Synovitz, "Dying to Go Home: Displaced Azerbaijanis Risk Mines, Munitions To See Homeland", RFE/RL (18 Feb. 2021), available at <https://www.rferl.org/a/azerbaijan-idps-karabakh-return-home-mines-munitions-risks/31110165.html>; J. Aliyev, "Azerbaijan clears mines from areas freed in Karabakh", AA (29 Nov. 2021), available at <https://www.aa.com.tr/en/azerbaijan-front-line/azerbaijan-clears-mines-from-areas-freed-in-karabakh/2059833>.

has noted, “the conflict region is one of the most contaminated mine and unexploded ordnance regions in the world”⁷⁶.

35. This untenable situation of ongoing threat and continuing violations will remain unchanged unless and until Armenia provides Azerbaijan with the information it possesses to enable the clearance of existing landmines, and stops planting additional mines in Azerbaijan’s territory. Despite broad condemnation from the international community, Armenia has made clear that it has no intention of doing so voluntarily. Indeed, Armenia’s Prime Minister reiterated earlier this month that Armenia would provide this desperately needed information only on the unreasonable condition that Azerbaijan grants blanket immunity to Armenian detainees who have been convicted of serious crimes⁷⁷. The Azerbaijani population affected thus remains under a real and imminent risk of irreparable prejudice to their rights under CERD.

36. Accordingly, the first and second measures requested satisfy all of the criteria for the indication of provisional measures set out in the Court’s settled jurisprudence, and are urgently needed to protect Azerbaijan’s rights pending the resolution of these proceedings.

37. Thank you, Madam President, honourable Members of the Court, for the privilege of appearing before you. I now kindly ask you, Madam President, to invite Professor Laurence Boisson de Chazournes to address the Court.

The PRESIDENT: I thank Ms Amirfar for her statement and I now invite Professor Laurence Boisson de Chazournes to take the floor.

Mme BOISSON DE CHAZOURNES :

**IV. DES MESURES CONSERVATOIRES SONT NÉCESSAIRES POUR FAIRE FACE
À L’INCITATION CONTINUE À LA HAINE ET À LA VIOLENCE CONTRE
LES AZERBAÏDJANAIS PAR L’ARMÉNIE**

1. Madame la présidente, Mesdames et Messieurs les juges, c’est pour moi un honneur de me présenter une nouvelle fois devant vous au nom de la République d’Azerbaïdjan.

⁷⁶ Parliamentary Assembly of the Council of Europe, resolution 2391, 27 Sep. 2021, available at <https://pace.coe.int/en/files/29483/html para. 10>.

⁷⁷ See the Prime Minister of the Republic of Armenia, “Sovereignty of Armenia, protection of the rights of the Armenians of Nagorno-Karabakh, including right to self-determination are among our priorities” (3 Oct. 2021), available at <https://www.primeminister.am/en/press-release/item/2021/10/03/Nikol-Pashinyan-visit-to-Lithuania/>.

2. Par sa troisième mesure conservatoire, l'Azerbaïdjan cherche à mettre fin à la campagne arménienne d'incitation à la haine et à la violence anti-azerbaïdjanaise. La participation arménienne à cette campagne de haine et de violence est manifeste à deux égards. Tout d'abord, l'Arménie n'a ni condamné ni puni les activités des groupes haineux armés ethno-nationalistes tels que Voxj Mnalu Arvest, aussi dénommé VoMA. Bien au contraire, l'Arménie les soutient. Deuxièmement, par des opérations de cyber-désinformation, l'Arménie diffuse de fausses informations et des déclarations destinées à attiser la haine contre les Azerbaïdjanais. Ce comportement de l'Arménie constitue une violation continue des droits fondamentaux des Azerbaïdjanais, tels que définis par la convention internationale sur l'élimination de toutes les formes de discrimination raciale (que nous dénommerons «CERD»).

3. De ce fait, Madame la présidente, des mesures conservatoires sont nécessaires pour protéger ces droits pendant que l'affaire est pendante devant la Cour et cette demande répond aux critères de la Cour pour l'indication de mesures conservatoires : les droits que l'Azerbaïdjan cherche à protéger sont plausibles, il existe un lien entre ces droits et les mesures demandées et elles sont nécessaires pour prévenir un risque imminent de préjudice irréparable. J'aborderai chacun de ces points successivement.

A. Les droits que l'Azerbaïdjan cherche à protéger sont plausibles

4. Les demandes de l'Azerbaïdjan relatives à la non-prévention et à la non-répression par l'Arménie des opérations des groupes haineux et celle relative aux opérations de cyber-désinformation visant à inciter à la violence ethnique et à promouvoir la haine raciale contre les Azerbaïdjanais engagent de manière plausible des droits de ces personnes en vertu de la CERD, en particulier, en vertu des articles 2, 4, 5 et 7.

5. Avant d'entrer dans le détail de la plausibilité des droits invoqués, permettez-moi de faire quelques remarques sur les droits et obligations prévus aux articles 2, 4, 5 et 7 de la CERD. Dans une affaire récente, la Cour a relevé qu'«un Etat partie à la CIEDR ne peut se prévaloir des droits»

au titre des articles 2, 4, 5 et 7, «que si les actes dont il tire grief semblent constituer des actes de discrimination raciale au sens de l'article premier de la convention»⁷⁸.

6. Comme la Cour l'a observé, les articles 2 et 5 «visent à protéger les individus contre la discrimination raciale en faisant obligation aux Etats parties de prendre certaines mesures»⁷⁹. Ces mesures consistent «à ne se livrer à aucun acte ou pratique de discrimination raciale»⁸⁰ ; «à ne pas encourager, défendre ou appuyer la discrimination raciale pratiquée par une personne ou une organisation quelconque»⁸¹ ; et «à garantir le droit de chacun à l'égalité devant la loi sans distinction de race, de couleur ou d'origine nationale ou ethnique»⁸² dans la jouissance des droits fondamentaux de l'Homme, y compris le «[d]roit à la sûreté de la personne et à la protection de l'Etat contre les voies de fait ou les sévices de la part soit de fonctionnaires du gouvernement, soit de tout individu, groupe ou institution»⁸³.

7. En sus de ces obligations, les articles 4 et 7 ajoutent des protections étendues contre le discours haineux. L'article 4, disposition clef de la CERD en matière de discours de haine⁸⁴, oblige les Etats parties à «condamne[r] toute propagande et toutes organisations qui s'inspirent d'idées ou de théories fondées sur la supériorité d'une race ou d'un groupe de personnes d'une certaine couleur ou d'une certaine origine ethnique, ou qui prétendent justifier ou encourager toute forme de haine et de discrimination raciales»⁸⁵ ; à «déclarer illégales et à interdire les organisations ... qui incitent à la discrimination raciale et qui l'encouragent»⁸⁶ et à «ne pas permettre aux autorités publiques ni aux institutions publiques ... d'inciter à la discrimination raciale ou de l'encourager»⁸⁷.

⁷⁸ *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Qatar c. Emirats arabes unis), mesures conservatoires, ordonnance du 23 juillet 2018, C.I.J. Recueil 2018 (II), p. 426, par. 52.*

⁷⁹ *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Géorgie c. Fédération de Russie), mesures conservatoires, ordonnance du 15 octobre 2008, C.I.J. Recueil 2008, p. 391-392, par. 126.*

⁸⁰ CERD, art. 2 1) a).

⁸¹ CERD, art. 2 1) b).

⁸² CERD, art. 5.

⁸³ CERD, art. 5, 5 b).

⁸⁴ Comité pour l'élimination de la discrimination raciale, Recommandation générale n° 15 concernant l'article 4 de la Convention, A/48/18, par. 1 ; Patrick Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination: A Commentary*, 268 (2016).

⁸⁵ CERD, art. 4.

⁸⁶ CERD, art. 4 b).

⁸⁷ CERD, art. 4 c).

8. L'article 7, quant à lui, prévoit que les Etats parties «s'engagent à prendre des mesures immédiates et efficaces»⁸⁸ pour lutter contre les préjugés raciaux.

9. Après cet exposé et ces courtes observations sur les différents articles, Mesdames et Messieurs les juges, il ne fait pas l'ombre d'un doute que les droits revendiqués par l'Azerbaïdjan au titre des articles 2, 4, 5 et 7 sont plausibles «en tant que fondés sur une interprétation possible» de la CERD⁸⁹.

1. Soutien aux groupes haineux violents

10. Le premier point que je vais aborder est la question du manquement de l'Arménie à prévenir ou à punir les opérations des groupes haineux sur son territoire incitant à la violence ethnique contre les Azerbaïdjanais. Ce comportement de l'Arménie à l'égard des groupes haineux engage, de manière plus que plausible, les droits garantis par les articles 2, 4, 5 et 7 de la CERD.

11. Comme je le disais en introduction, la VoMA est un groupe haineux armé ethno-nationaliste, qui promeut et incite abondamment à la discrimination raciale sur son site Internet et sur ses réseaux sociaux. Il opère ouvertement en Arménie à travers des branches situées sur tout son territoire dans le but de recruter et de former des civils arméniens⁹⁰. Par ailleurs, son soutien et ses liens avec les autorités arméniennes, y compris les forces armées, sont fièrement revendiqués⁹¹.

12. La VoMA est fondée sur le principe de la supériorité ethnique des Arméniens et véhicule une haine ethnique à l'encontre des Azerbaïdjanais. A l'onglet n° 5 de vos dossiers, aux pages 1 à 8, vous trouverez un ensemble de déclarations disponibles publiquement sur le site Internet de la VoMA. Le groupe se décrit comme un «militant nationalist movement» qui vise à construire une «Nation-Army» de 100 000 «Armenian Citizens and Diaspora» pour «[f]ortify all strategically

⁸⁸ CERD, art. 7.

⁸⁹ Voir *Questions concernant l'obligation de poursuivre ou d'extrader (Belgique c. Sénégal), mesures conservatoires, ordonnance du 28 mai 2009, C.I.J. Recueil 2009*, p. 152, par. 60.

⁹⁰ Voir, par exemple, **onglet n° 5** du dossier de plaidoiries, **annexe 35** de la requête introductive d'instance déposée par l'Azerbaïdjan, 23 septembre 2021 [ci-après, la «requête de l'Azerbaïdjan»], *Voxj Mnalu Arvest (VoMA) Social Media Posts*, p. 18-19 (traduction certifiée) ; **annexe 58**, *Voxj Mnalu Arvest (VoMA), Financial receipts and report on work completed in September* (dernière consultation en octobre 2021) (traduction certifiée), p. 4.

⁹¹ Voir, par exemple, **onglet n° 5** du dossier de plaidoiries, **annexe 35** de la requête de l'Azerbaïdjan, *Voxj Mnalu Arvest (VoMA) Social Media Posts*, p. 18 (traduction certifiée) ; **onglet n° 5** du dossier de plaidoiries, **annexe 61**, *Compendium of Social Media Posts, Voxj Mnalu Arvest (VoMA)*, p. 19 (traduction certifiée).

important territory for the indigenous population»⁹². Cette armée de la nation de la VoMA fait appel à des citoyens arméniens, et à des personnes comprenant «at least 25 % ... Armenian blood»⁹³. La cible explicite de cette armée de la nation est la menace supposée des Azerbaïdjanais, ou, comme la VoMA les appelle avec haine, les «mixed Turkish-pseudo-Islamic formations», que la VoMA déclare devoir purger du «sick body of Eurasia»⁹⁴.

13. En plus de son site Internet, le groupe haineux partage régulièrement et activement des messages racialement discriminatoires sur les réseaux sociaux, ciblant les Azerbaïdjanais en tant que groupe ethnique ou national. La propagande de la VoMA a pour effet de déshumaniser les Azerbaïdjanais en effaçant leur humanité et leur identité ethnique. Je vous invite une nouvelle fois à regarder l'onglet n° 5 de vos dossiers. Vous y trouverez un florilège d'exemples de diffusion par la VoMA de propagande anti-azerbaïdjanaise sur les réseaux sociaux, appelant les Azerbaïdjanais, de manière péjorative, «Turks»⁹⁵ ou «Caspian Turks»⁹⁶ et se référant à l'Azerbaïdjan comme à la «Caspian Threat»⁹⁷ qui devrait être «liquidat[ed]»⁹⁸.

14. Encore aujourd'hui, la VoMA continue d'inciter à la haine et à la violence contre les Azerbaïdjanais. En mars 2021, par exemple, le groupe haineux a invité ses adeptes à rejoindre un camp d'entraînement militaire en Arménie et a posté sur son canal Telegram l'appel aux armes que vous voyez maintenant sur vos écrans et qui se trouve également à l'onglet n° 5 de vos dossiers, à la page 11 : «We now have even more motivation to become strong and achieve the above goal» of «eliminating Azerbaijan»⁹⁹. En mai 2021, la VoMA a publié sur sa page Facebook la déclaration

⁹² «About Us», *VoMA* (dernière consultation le 21 septembre 2021), disponible à l'adresse suivante : <https://www.voma.center/en/who-we-are>.

⁹³ **Annexe 59**, Transcription, extraits traduits de l'interview de Vova Vartanov sur YouTube (27 mai 2021), <https://www.youtube.com/watch?v=eQTszEQU5CM> (traduction certifiée).

⁹⁴ Voir «About Us», *VoMA* (dernière consultation le 21 septembre 2021), disponible à l'adresse suivante : <https://www.voma.center/en/who-we-are>. Voir, également, «Threats», *VoMA* (dernière consultation le 21 septembre 2021), disponible à l'adresse suivante : <https://www.voma.center/en/threats>.

⁹⁵ Voir, par exemple, **onglet n° 5** du dossier de plaidoiries, **annexe 35** de la requête de l'Azerbaïdjan, Voxj Mnalu Arvest (VoMA) Social Media Posts, p. 2 (traduction certifiée).

⁹⁶ Voir, par exemple, **onglet n° 5** du dossier de plaidoiries, **annexe 35** de la requête de l'Azerbaïdjan, Voxj Mnalu Arvest (VoMA) Social Media Posts, p. 10 (traduction certifiée).

⁹⁷ Voir «About Us», *VoMA* (dernière consultation le 4 octobre 2021), disponible à l'adresse suivante : <https://www.voma.center/en/who-we-are>.

⁹⁸ Voir, par exemple, **onglet n° 5** du dossier de plaidoiries, **annexe 35** de la requête de l'Azerbaïdjan, Voxj Mnalu Arvest (VoMA) Social Media Posts, p. 2 (traduction certifiée).

⁹⁹ Voir **onglet n° 5** du dossier de plaidoiries, **annexe 35** de la requête de l'Azerbaïdjan, Voxj Mnalu Arvest (VoMA) Social Media Posts, p. 2 (traduction certifiée).

suivante que vous voyez sur vos écrans. Celle-ci se réfère aux Azerbaïdjanais comme «[f]alse Muslims» et diabolise l'Azerbaïdjan comme un «wolf worshipping terrorist state» contre lequel l'Arménie se dresse comme un «civil outpost» pour le bien du «Christendom's future»¹⁰⁰. Pas plus tard que le mois dernier, la VoMA a posté sur son canal Telegram :

«We need to militarize. We need to get ourselves trained ... We live in a monoethnic country and if we consolidate ourselves and ... get prepared for war, then not only will we not lose anything, we'll gain!»¹⁰¹

15. L'Arménie permet à la VoMA d'opérer en toute impunité à partir de son territoire. Cela ressort notamment des propres présentations de la VoMA. Le groupe continue de recruter de nouveaux membres, de collecter des fonds, et d'exploiter des centres de formation en Arménie¹⁰². Révélateur de l'attitude de l'Arménie, celle-ci s'engage activement dans la coopération militaire avec ce groupe¹⁰³. En effet, la VoMA signale qu'elle a déployé des volontaires de reconnaissance d'artillerie et des tireurs d'élite à la frontière entre l'Azerbaïdjan et l'Arménie, qui auraient «work[ed] in close cooperation with [Armenian] Armed Forces and received a commendation by the command»¹⁰⁴.

16. En ne condamnant pas ou en n'interdisant pas les groupes paramilitaires anti-azerbaïdjanais, l'Arménie a permis à ces groupes de proliférer sur son territoire. Par exemple, le groupe «Statehood as a National Value», connu sous son acronyme arménien «POGA», aurait commencé en mars 2021 à organiser des programmes d'entraînement militaire pour préparer les Arméniens de tout âge à la guerre¹⁰⁵. Par ailleurs, les pages des réseaux sociaux de POGA, dont vous trouverez des extraits à l'onglet n° 6 de vos dossiers, glorifient régulièrement Garegin Nzhdeh¹⁰⁶, fondateur de l'idéologie ethno-nationaliste «tseghakron», et appellent les Arméniens à prendre les

¹⁰⁰ Voir **onglet n° 5** du dossier de plaidoiries, **annexe 35** de la requête de l'Azerbaïdjan, Voxj Mnalu Arvest (VoMA) Social Media Posts, p. 5 (traduction certifiée).

¹⁰¹ **Onglet n° 5** du dossier de plaidoiries, **annexe 61**, Compendium of Social Media Posts, Voxj Mnalu Arvest (VoMA), p. 2 (traduction certifiée).

¹⁰² Voir, par exemple, onglet n° 5 du dossier de plaidoiries, annexe 35 de la requête de l'Azerbaïdjan, Voxj Mnalu Arvest (VoMA) Social Media Posts, p. 16-29 (traduction certifiée).

¹⁰³ *Ibid.*, p. 18.

¹⁰⁴ *Ibid.*

¹⁰⁵ «Youth Population Preparing for War in Armenia», *EU Reporter* (12 juillet 2021), disponible à l'adresse suivante : <https://www.eureporter.co/world/armenia/2021/07/12/youth-population-preparing-for-war-in-armenia/> (dernière consultation le 30 septembre 2021).

¹⁰⁶ Requête de l'Azerbaïdjan, p. 28, par. 47 ; p. 60, par. 87.

armes pour se battre pour une patrie arménienne élargie comprenant un territoire situé à l'intérieur des frontières souveraines de l'Azerbaïdjan. L'idéologie de tseghakron prône la haine sur la base de la supériorité ethnique des Arméniens¹⁰⁷. Les écrits de Nzhdeh appellent, en ce sens, les Arméniens à «defeat the enemy of my race, the Turks» et à préserver l'Arménie «for Armenians»¹⁰⁸.

17. Comme pour la VoMA, l'Arménie n'a rien fait pour condamner ou interdire les opérations de POGA sur son territoire. Les torts de l'Arménie ne se limitent pas à de l'inaction. L'Arménie glorifie activement Nzhdeh, insufflant un climat favorable aux groupes de haine. Une statue massive à son effigie se trouve fièrement sur la place centrale d'Erevan¹⁰⁹.

18. Madame la présidente, en ne condamnant pas ou en n'interdisant pas les opérations de la VoMA ou de groupes semblables, ainsi qu'en glorifiant l'idéologie raciste utilisée pour cibler les Azerbaïdjanais, l'Arménie porte atteinte, de manière plus que plausible, aux droits garantis par les articles 2, 4 et 7 de la CERD, ainsi qu'aux droits des Azerbaïdjanais, garantis par l'article 5 b) de la convention, à la sûreté de la personne et à la protection contre la violence ou les atteintes à l'intégrité physique sans distinction d'origine nationale ou ethnique.

2. Les opérations de cyber-désinformation

19. J'en viens maintenant à la campagne arménienne d'incitation à la haine par des opérations de cyber-désinformation. Ces opérations sont aussi insidieuses que difficiles à combattre. Elles sévissent sur les réseaux sociaux tels que Twitter. Ce réseau social — à savoir Twitter — a rendu publiques ses enquêtes visant à repérer et à supprimer de sa plate-forme les opérations de désinformation étatiques, en raison de la manière «néfaste» dont elles «sapent l'intégrité de Twitter», en raison aussi du fait qu'elles «interfèrent dans le débat public»¹¹⁰.

¹⁰⁷ Onglet n° 6 du dossier de plaidoiries, annexe 62, Compendium of Social Media Posts, Statehood as a National Value (POGA) (traduction certifiée).

¹⁰⁸ Annexe 3 de la requête de l'Azerbaïdjan, Excerpts from “Garegin Nzhdeh Tribal Religion Movement” (traduction certifiée).

¹⁰⁹ «Armenian monument to Nazi collaborator draws criticism», *The Jerusalem Post* (17 juin 2016), disponible à l'adresse suivante : <https://www.jpost.com/diaspora/armenian-monument-to-nazi-collaborator-draws-criticism-457072>.

¹¹⁰ «Enabling further research of information operations on Twitter», *Twitter, Inc.* (17 octobre 2018), disponible à l'adresse suivante : https://blog.twitter.com/en_us/topics/company/2018/enabling-further-research-of-information-operations-on-twitter ; voir, également, «Disclosing new data to our archive of information operations», *Twitter, Inc.* (20 septembre 2019), disponible à l'adresse suivante : https://blog.twitter.com/en_us/topics/company/2019/info-ops-disclosure-data-september-2019 ; «Disclosing networks of state-linked information operations we've removed», *Twitter, Inc.* (12 juin 2020), disponible à l'adresse suivante : https://blog.twitter.com/en_us/topics/company/2020/information-operations-june-2020.

20. Une enquête menée par Twitter a révélé l'ampleur des «opérations d'information liées à l'Etat» en Arménie¹¹¹. Dans le détail, Twitter explique :

«Under our platform manipulation policy, we investigated and removed 35 accounts that had ties to the Government of Armenia. These accounts were created in order to advance narratives that were targeting Azerbaijan ... In some cases, the fake accounts purported to represent government and political figures in Azerbaijan, as well as news entities claiming to operate in Azerbaijan.»¹¹²

21. L'ensemble de données des tweets associés à ces opérations se compose de plus de 70 000 tweets remontant à 2014¹¹³, y compris des tweets de 10 faux comptes gouvernementaux et de 5 comptes d'informations fallacieuses¹¹⁴. Selon le Stanford Internet Observatory, la «tactique la plus notable» des opérations a été la création de comptes usurpant l'identité de responsables azerbaïdjanais, et «notamment l'actuel et l'ancien ministre des affaires étrangères, le porte-parole de l'actuel ministre des affaires étrangères, le ministre de la défense, le conseiller du président pour les affaires étrangères et la vice-présidente»¹¹⁵.

22. Mesdames et Messieurs les juges, il ne fait aucun doute que l'Arménie a des liens directs avec les comptes fabriqués dans le cadre de la campagne de cyber-désinformation en cours¹¹⁶, ou, à tout le moins, a permis la création de comptes se faisant passer pour des Azerbaïdjanais. Ces faux comptes liés au gouvernement ont diffusé un mélange de déclarations *anti-azerbaïdjanaises* et *anti-arméniennes*, telles que celles que vous voyez maintenant sur vos écrans : «#Azerbaijan is [an] artificial formation w/ people [who] believe they're more than Oghuz vagabond tribes #NKpeace

¹¹¹ «Disclosing networks of state-linked information operations», *Twitter, Inc.* (23 février 2021), disponible à l'adresse suivante : https://blog.twitter.com/en_us/topics/company/2021/disclosing-networks-of-state-linked-information-operations.

¹¹² «Disclosing networks of state-linked information operations», *Twitter, Inc.* (23 février 2021), disponible à l'adresse suivante : https://blog.twitter.com/en_us/topics/company/2021/disclosing-networks-of-state-linked-information-operations-.html.

¹¹³ Onglet n° 8 du dossier de plaidoiries, E. Cryst & S. Grossman, *Sockpuppets Target Nagorno-Karabakh*, Stanford Internet Observatory, Cyber Policy Center (23 février 2021), p. 2, disponible à l'adresse suivante : <https://cyber.fsi.stanford.edu/io/publication/sockpuppets-target-nagorno-karabakh-takedown>.

¹¹⁴ *Ibid.*, p. 4.

¹¹⁵ *Ibid.*, p. 2, 5.

¹¹⁶ «Disclosing networks of state-linked information operations», *Twitter, Inc.* (23 février 2021), disponible à l'adresse suivante : https://blog.twitter.com/en_us/topics/company/2021/disclosing-networks-of-state-linked-information-operations-.html.

#KarabakhNow» et «Mars is an ancestral Azerbaijani land, insidious and malicious little Armenian people must occupy it»¹¹⁷.

23. L'enquête de Twitter a permis d'isoler ces comptes fabriqués et de mettre fin à l'une des opérations de la campagne de cyber-désinformation arménienne. Concernant l'activité de ces opérations, le Stanford Internet Observatory releva que celle-ci augmentait à chaque affrontement, même ponctuel. Bien évidemment, le conflit de l'an passé n'y échappa pas¹¹⁸. A propos de ces opérations, l'observatoire ajouta également que, «en confirmant ou en alimentant les perceptions des responsables azerbaïdjanais auprès du public arménien», celles-ci renforçaient «les divisions transfrontalières»¹¹⁹.

24. Madame la présidente, Mesdames et Messieurs les juges, cette campagne de désinformation et les autres tentatives du Gouvernement arménien d'attiser les tensions ethniques entre les Azerbaïdjanais et les Arméniens violent pleinement les articles 2, 4 et 7 de la CERD¹²⁰.

B. Les mesures conservatoires demandées sont liées aux droits que l'Azerbaïdjan cherche à protéger

25. Je vais maintenant aborder la deuxième condition préalable à l'indication de mesures conservatoires, à savoir qu'il existe un lien entre les droits que l'Azerbaïdjan cherche à protéger et les mesures demandées. Là encore, cette condition est remplie en l'espèce.

26. Les mesures conservatoires demandées par l'Azerbaïdjan obligerait l'Arménie à empêcher la VoMA et d'autres groupes semblables de

«engaging in the incitement of racial hatred and racially-motivated violence targeted at Azerbaijanis [and to] cease and desist incitement based on the fabrication of public and

¹¹⁷ Voir, par exemple, annexe 34 de la requête de l'Azerbaïdjan, Twitter, Inc., Information Operations Report Archive (2021), disponible à l'adresse suivante : <https://transparency.twitter.com/en/reports/information-operations.html> (traduction certifiée) (contenant des jeux de données dont le jeu de données référencé : Armenia (February 2021) – 35 Accounts dataset).

¹¹⁸ Onglet n° 8 du dossier de plaidoiries E. Cryst & S. Grossman, *Sockpuppets Target Nagorno-Karabakh*, Stanford Internet Observatory, Cyber Policy Center (23 février 2021), p. 2, 5, disponible à l'adresse suivante : <https://cyber.fsi.stanford.edu/io/publication/sockpuppets-target-nagorno-karabakh-takedown>.

¹¹⁹ Onglet n° 8 du dossier de plaidoiries E. Cryst & S. Grossman, *Sockpuppets Target Nagorno-Karabakh*, Stanford Internet Observatory, Cyber Policy Center (23 février 2021), p. 17, disponible à l'adresse suivante : <https://cyber.fsi.stanford.edu/io/publication/sockpuppets-target-nagorno-karabakh-takedown>.

¹²⁰ Center of Analysis of International Relations, *Azerbaijanophobia in Armenia: Hostility in the Pre-War and Post-War Discourse of Armenians* (May 2021), p. 9-10, disponible à l'adresse suivante : <https://aircenter.az/uploads/files/hate%20speech%20english.pdf> ; annexe 5, «Council of Europe slams Armenian president's 'ethnic incompatibility' remarks», *BBC* (31 janvier 2003) ; annexe 28, N. Manucharova, «It is strange but we must fight to democratize Azerbaijan», *Novoe Vremia* (16 mars 2004) (traduction certifiée) ; annexe 29, Azerbaijan Society of America, «Is Armenia seeking peace?» *Baku Today* (28 mars 2004).

private hate speech attributed to Azerbaijanis on Twitter and other social media and traditional media channels»¹²¹.

Ces mesures visent spécifiquement à protéger les Azerbaïdjanais des discours de haine racistes et du risque de violence motivée par des considérations ethniques du fait de la campagne d'incitation menée actuellement par l'Arménie.

27. Ces mesures sont donc directement liées aux droits invoqués par l'Azerbaïdjan en vertu des articles 2, 4, 5 et 7 de la CERD.

C. Les mesures conservatoires demandées sont nécessaires pour prévenir un risque imminent de préjudice irréparable aux droits des Azerbaïdjanais

28. J'en viens maintenant à la dernière condition nécessaire à l'indication de mesures conservatoires, celle selon laquelle les mesures demandées sont nécessaires pour prévenir un risque imminent de préjudice irréparable aux droits en litige. Cette condition est aussi satisfaite. Les mesures conservatoires que l'Azerbaïdjan sollicite sont en effet urgentes car l'Arménie continue de perpétrer les violations de la CERD que j'ai évoquées, faisant courir aux droits des Azerbaïdjanais le risque d'un préjudice irréparable.

29. Madame la présidente, le Comité CERD a clairement observé dans le passé que «[l]orsque des menaces de violence raciale sont proférées, en particulier en public et par un groupe de personnes, l'Etat partie a le devoir d'enquêter rapidement et diligemment»¹²². Cela fait écho au *dictum* de la Cour dans l'affaire du *Détroit de Corfou*, rappelant «l'obligation, pour tout Etat, de ne pas laisser utiliser son territoire aux fins d'actes contraires aux droits d'autres Etats»¹²³. Malgré cela, à ce jour, l'Arménie n'a pris aucune mesure suffisante pour freiner ou interdire l'incitation à la haine et à la violence.

30. En l'absence d'intervention de la Cour de céans pour préserver les droits en cause, l'Arménie continuera à propager de la désinformation et de la propagande anti-azerbaïdjanaise et continuera à autoriser la VoMa et d'autres groupes semblables à diffuser des messages de supériorité raciale et à armer et entraîner les Arméniens pour une guerre ethnique contre les Azerbaïdjanais.

¹²¹ Demande en indication de mesures conservatoires de l'Azerbaïdjan, 23 septembre 2021, p. 24, par. 39.

¹²² *L. K. c. Pays-Bas*, Opinion du Comité pour l'élimination de la discrimination raciale, Communication n° 4/1991, Nations Unies, doc. A/48/18, annexe IV, par. 6.6 ; Patrick Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination: A Commentary*, 281 (2016).

¹²³ *Détroit de Corfou (Royaume-Uni c. Albanie)*, fond, arrêt, C.I.J. Recueil 1949, p. 22.

31. Ainsi que l'a souligné le Comité CERD, «les menaces et les actes de violence raciale mènent aisément à d'autres actes de même nature et créent une atmosphère d'hostilité»¹²⁴. Cette atmosphère d'hostilité peut ensuite dégénérer et «condui[re] à des violations massives des droits de l'homme et à des génocides, ainsi qu'à des situations de conflit»¹²⁵.

32. La menace de violence contre les Azerbaïdjanais est donc réelle. Elle est même exacerbée par l'intensification des appels aux armes par le groupe haineux armé VoMA. Le mois dernier, celui-ci a publié sur sa chaîne Telegram la déclaration suivante, que vous pouvez voir sur vos écrans et à l'onglet n° 5 de vos dossiers :

«We have to realize that the peaceful life is over ... Guns should now be our best friend, brother, and friend. And the skill to fight. ALL of us must become WARRIORS. ... Stop writing these complaints and take up arms.»¹²⁶

33. Dans son dernier rapport d'activités, qui présente le travail accompli en septembre 2021, la VoMA a indiqué qu'elle avait organisé des camps de formation pour 55 personnes, en plus de cours dispensés à plus de 100 personnes à Erevan. Elle a également formé huit instructeurs pour les différentes antennes présentes à travers l'Arménie et a sollicité des dons pour des véhicules et des «arms for weapons practice and protection in the populated areas along the borders»¹²⁷.

34. Madame la présidente, on ne saurait trop insister sur l'urgence de la menace résultant du comportement de l'Arménie. La Cour a d'ailleurs déjà jugé que certains des droits actuellement en litige, en particulier le droit à la sûreté de la personne garanti par l'article 5 b) de la CERD, «sont de nature telle que le préjudice qui leur serait porté pourrait être irréparable»¹²⁸.

¹²⁴ Comité pour l'élimination de la discrimination raciale, Recommandation générale n° 15 concernant l'article 4 de la Convention, A/48/18, par. 2.

¹²⁵ Comité pour l'élimination de la discrimination raciale, Recommandation générale n° 35 concernant la lutte contre les discours de haine raciale, CERD/C/GC/35, par. 3.

¹²⁶ **Onglet n° 5** du dossier de plaidoiries, **annexe 61**, Compendium of Social Media Posts, Voxj Mnalv Arvest (VoMA), p. 5 (traduction certifiée).

¹²⁷ **Annexe 58**, Voxj Mnalv Arvest (VoMA), *Financial receipts and reports on work completed in September* (dernière consultation en octobre 2021), p. 7 (traduction certifiée).

¹²⁸ *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Géorgie c. Fédération de Russie), mesures conservatoires, ordonnance du 15 octobre 2008, C.I.J. Recueil 2008, p. 396, par. 142. Voir aussi Application de la convention internationale pour la répression du financement du terrorisme et de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Ukraine c. Fédération de Russie), mesures conservatoires, ordonnance du 19 avril 2017, C.I.J. Recueil 2017, p. 138, par. 96 ; Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Qatar c. Emirats arabes unis), mesures conservatoires, ordonnance du 23 juillet 2018, C.I.J. Recueil 2018 (II), p. 430, par. 67.*

35. En effet, les dommages physiques ne peuvent pas être effacés, pas plus que les conséquences mentales et émotionnelles causées par la menace constante de violence sur la seule base de l'origine ethnique. Faute d'indication de mesures conservatoires par la Cour, les Azerbaïdjanais risquent quotidiennement d'être soumis à des discours de haine et à des violences en raison de leur origine nationale ou ethnique.

36. Mesdames et Messieurs les juges, j'en arrive à la conclusion de mon propos. Les critères nécessaires à l'indication de mesures conservatoires sont clairement remplis en ce qui concerne les mesures demandées par l'Azerbaïdjan au sujet de la campagne d'incitation à la haine et à la violence anti-azerbaïdjanaise menée par l'Arménie. Il me reste à remercier la Cour de son attention. Je vous saurais gré, Madame la présidente, de bien vouloir donner la parole à M^e Natalie Reid.

The PRESIDENT: I thank Professor Boisson de Chazournes for her statement. I now invite Ms Natalie Reid to take the floor.

Ms REID:

V. PROVISIONAL MEASURES ARE NEEDED TO PRESERVE EVIDENCE

1. Madam President, honourable Members of the Court, it is an honour indeed to appear before this Court on behalf of the Republic of Azerbaijan.

2. I will address the fourth provisional measure requested, which concerns Armenia's ongoing failure to investigate, and thereby collect and preserve evidence of, allegations of ethnically motivated crimes against Azerbaijanis¹²⁹.

3. As set out in Azerbaijan's Application, Armenia has committed repeated and continuing violations of CERD in the First Garabagh War, the 30 ensuing years of occupation, the Second Garabagh War and its aftermath, and continues to breach its CERD obligations to this day¹³⁰. As Mr. Donovan noted last week, Armenia has done little or nothing to investigate, much less prosecute, the perpetrators of heinous crimes against Azerbaijanis, including the Khojaly massacre in 1992. For decades, Armenia's persistent refusal to comply with its international obligations, including the duty

¹²⁹ Azerbaijan's Request, paras. 27-29, 37, 39.

¹³⁰ See generally Azerbaijan's Application.

to investigate and preserve evidence, has left Azerbaijani victims without effective remedies as required by CERD. In many cases, the evidence of the violation is evanescent: victims die, suspects and witnesses disperse, physical evidence and records deteriorate or disappear. In that circumstance, a State need not actively destroy evidence for critical proof of violations to be lost; all it need do is nothing.

4. Today, there is an urgent need for Armenia to commence effective investigations to preserve critical evidence of CERD violations. Armenia is currently on notice of multiple credible and substantiated allegations of ethnically motivated crimes committed by its servicemen against Azerbaijanis within the last 13 months. Yet it has given no serious indication of effective investigations of these allegations.

A. Azerbaijan seeks to protect plausible rights under CERD

5. Azerbaijan's request seeks to safeguard the well-established right to effective protection and remedies under Article 6 of CERD¹³¹.

6. As Azerbaijan and non-governmental organizations have extensively documented, there are credible allegations that during and after the Second Garabagh War, Armenian servicemen committed several ethnically motivated crimes against Azerbaijanis, including unlawfully executing, torturing and mistreating Azerbaijani servicemen, and mutilating and desecrating the bodies of the Azerbaijani dead¹³².

7. To issue the requested measure, the Court does not need to decide whether Armenia's conduct over the last 30 years, as set out in the Application, has breached its substantive obligations under CERD¹³³. What is clear at this stage, is that Armenia is currently breaching its duty of effective investigation under CERD with respect to recent, credible and substantiated allegations. The CERD

¹³¹ Azerbaijan's Request, para. 37.

¹³² See e.g. *ibid.*, para. 28.

¹³³ See e.g. *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Provisional Measures, Order of 15 March 1996, I.C.J. Reports 1996*, pp. 23-24, paras. 42 and 49 (4); *Frontier Dispute (Burkina Faso v. Mali), Provisional Measures, Order of 10 January 1986*, p. 9, para. 20 and p. 12, para. 32 (B).

Committee has repeatedly affirmed this duty¹³⁴, explaining that “[w]hen threats of racial violence are made, and especially when they are made in public and by a group, it is incumbent upon the State” under Article 6 of CERD “to investigate with due diligence and expedition”¹³⁵. This “obligation is *a fortiori* applicable” when a violent assault has already occurred¹³⁶.

8. Armenia is clearly on notice of these credible allegations, which have been made in public and by various independent groups. In addition to contemporaneous reports of multiple violations by media and non-governmental organizations, and public statements by Azerbaijan, the Council of Europe’s Parliamentary Assembly recently observed that the alleged “hate speech and hate crimes” that occurred “during the 6-week war” between September and November 2020 included “the filming of horrific acts and their sharing on social media”¹³⁷, including “alleged acts of abuse and executions” as well as outrages committed on the bodies of dead servicemen¹³⁸. Several such videos reflecting offences committed by Armenian servicemen were posted to and distributed on social media, including a notorious recording (submitted to this Court in Annex 38) in which an Armenian serviceman cuts the throat of an Azerbaijani border guard¹³⁹.

9. It is neither necessary nor appropriate to discuss at length the brutal details of the crimes depicted in these videos. What is apparent is that both the conduct reflected in the videos and the purpose for which they were recorded and publicly shared implicate rights protected by CERD. Among other misconduct, the recordings capture the mistreatment of wounded Azerbaijani

¹³⁴ See e.g. *Kashif Ahmad v. Denmark*, Comm. No. 16/1999, Opinion, doc. CERD/C/56/D/16/1999 (2000), paras. 6.4, 9; *Durmic v. Serbia and Montenegro*, Comm. No. 29/2003, Opinion, doc. CERD/C/68/D/29/2003 (2006), para. 10; *Habassi v. Denmark*, Comm. No. 10/1997, Opinion, doc. CERD/C/54/D/10/1997, CERD Committee (6 Apr. 1999), para. 9.3; *Adan v. Denmark*, Comm. No. 43/2008, Opinion, doc. CERD/C/77/D/43/2008 (2010), para. 7.7; *TBB-Turkish Union in Berlin/Brandenburg v. Germany*, Comm. No. 48/2010, Opinion, doc. CERD/C/82/D/48/2010 (2013), paras. 12.8-12.9.

¹³⁵ *L.K. v. The Netherlands*, Comm. No. 4/1991, Opinion, doc. CERD/C/42/D/4/1991 (16 Mar. 1993), para. 6.6.

¹³⁶ *Dawas and Shava v. Denmark*, Comm. No. 46/2009, Opinion, doc. CERD/C/80/D/46/2009 (2012), para. 7.4.

¹³⁷ Parliamentary Assembly of the Council of Europe, *Resolution 2391* (27 Sept. 2021), para. 19.1, available at <https://pace.coe.int/en/files/29483/html>.

¹³⁸ Parliamentary Assembly of the Council of Europe, Committee on Migration, Refugees and Displaced Persons, *Humanitarian consequences of the conflict between Armenia and Azerbaijan*, doc. 15363, (13 Sept. 2021), paras. 55-56, 130-131, available at <https://pace.coe.int/en/files/29401/html>.

¹³⁹ *Ibid.*, paras. 48-49.

servicemen¹⁴⁰, the abuse and desecration of the bodies of dead Azerbaijani servicemen¹⁴¹, and acts intended to humiliate and violate the dignity of such dead servicemen¹⁴². As the Council of Europe rapporteur recognized, the filming and distribution of these videos further inflames tensions and ~~incites~~ *excites* ethnic animus, and should be considered as instances of hate speech in and of themselves¹⁴³.

10. We direct the Court's attention to Annexes 38 to 53 of Azerbaijan's evidentiary submissions, which include *more than a dozen* examples of such videos or posts that Azerbaijan formally submitted — and thus formally provided to Armenia — in interstate proceedings before the European Court of Human Rights nine months ago¹⁴⁴.

11. Critically, these recordings and other video and photographic evidence shared on social media platforms *also* contain valuable evidence for *investigations* of these serious allegations: in a number of them — including those submitted to the Court in Annexes 40, 43, 45, 47, 49, 51, and 53 — the faces of the apparent perpetrators and some witnesses are plainly visible and their voices are clearly heard. The fact that many of these videos were posted and shared on social media also provides potentially valuable leads for identifying suspects and potential witnesses among those who recorded or uploaded the footage or commented on the posts.

¹⁴⁰ See e.g. Ann. 39, *Republic of Azerbaijan v. Republic of Armenia*, ECHR Application No. 47319/20, Government of the Republic of Azerbaijan, Ann. V24; Ann. 40, *Republic of Azerbaijan v. Republic of Armenia*, ECHR Application No. 47319/20, Government of the Republic of Azerbaijan, Ann. V25; Ann. 41, *Republic of Azerbaijan v. Republic of Armenia*, ECHR Application No. 47319/20, Government of the Republic of Azerbaijan, Ann. V26; Ann. 42, *Republic of Azerbaijan v. Republic of Armenia*, ECHR Application No. 47319/20, Government of the Republic of Azerbaijan, Ann. V27; Ann. 43, *Republic of Azerbaijan v. Republic of Armenia*, ECHR Application No. 47319/20, Government of the Republic of Azerbaijan, Ann. V28; Ann. 44, *Republic of Azerbaijan v. Republic of Armenia*, ECHR Application No. 47319/20, Government of the Republic of Azerbaijan, Ann. V29; Ann. 45, *Republic of Azerbaijan v. Republic of Armenia*, ECHR Application No. 47319/20, Government of the Republic of Azerbaijan, Ann. V30; Ann. 53, *Republic of Azerbaijan v. Republic of Armenia*, ECHR Application No. 47319/20, Government of the Republic of Azerbaijan, Ann. 387.

¹⁴¹ See e.g. Ann. 46, *Republic of Azerbaijan v. Republic of Armenia*, ECHR Application No. 47319/20, Government of the Republic of Azerbaijan, Ann. V31; Ann. 47, *Republic of Azerbaijan v. Republic of Armenia*, ECHR Application No. 47319/20, Government of the Republic of Azerbaijan, Ann. V32; Ann. 48, *Republic of Azerbaijan v. Republic of Armenia*, ECHR Application No. 47319/20, Government of the Republic of Azerbaijan, Ann. V33; Ann. 50, *Republic of Azerbaijan v. Republic of Armenia*, ECHR Application No. 47319/20, Government of the Republic of Azerbaijan, Ann. V35; Ann. 51, *Republic of Azerbaijan v. Republic of Armenia*, ECHR Application No. 47319/20, Government of the Republic of Azerbaijan, Ann. V36; Ann. 52, *Republic of Azerbaijan v. Republic of Armenia*, ECHR Application No. 47319/20, Government of the Republic of Azerbaijan, Ann. V37.

¹⁴² See e.g. Ann. 49, *Republic of Azerbaijan v. Republic of Armenia*, ECHR Application No. 47319/20, Government of the Republic of Azerbaijan, Ann. V34.

¹⁴³ Parliamentary Assembly of the Council of Europe, Committee on Migration, Refugees and Displaced Persons, *Humanitarian consequences of the conflict between Armenia and Azerbaijan*, doc. 15363, (13 Sept. 2021), paras. 130-131, available at <https://pace.coe.int/en/files/29401/html>.

¹⁴⁴ See *Azerbaijan v. Armenia* (No. 47319/20), European Court of Human Rights, 15 Jan. 2021 Application.

12. As shown in tab 14 of your folders, Armenia's own replies to the European Court of Human Rights have provided further substantiation for the allegations. Armenia has confirmed that several of the Azerbaijani servicemen mistreated in the videos were in Armenia's custody — and, in some instances, Armenia has even confirmed the injuries suffered by those individuals. For instance, Armenia confirmed that an Azerbaijani serviceman shown in one of the videos¹⁴⁵ was captured in the formerly occupied territories and transferred to Armenia based on the possible threat to his life¹⁴⁶. Armenia also verified that he had sustained blunt trauma and a penetrating wound to his chest, which correspond with the injuries in the video¹⁴⁷. Armenia has likewise confirmed the capture of three other servicemen whose mistreatment was recorded in these videos, *has* confirmed their transfer to Armenia based on a potential threat to their lives, and then confirmed injuries that at least one of them had sustained¹⁴⁸. And of course, the incidents captured in these videos are just those which are publicly known and reported; Armenia is no doubt aware of other similar crimes not widely disseminated on social media.

13. Faced with this compelling evidence, Azerbaijan and the international community have repeatedly called on Armenia to investigate these hate crimes¹⁴⁹. In response to similar allegations involving Azerbaijani servicemen, the Azerbaijani authorities announced their intention to investigate as early as November 2020¹⁵⁰. The very next month, the Azerbaijani Prosecutor General's

¹⁴⁵ See Ann. 45, *Republic of Azerbaijan v. Republic of Armenia*, ECHR Application No. 47319/20, Government of the Republic of Azerbaijan, Ann. V30; Ann. 53, *Republic of Azerbaijan v. Republic of Armenia*, ECHR Application No. 47319/20, Government of the Republic of Azerbaijan, Ann. 387.

¹⁴⁶ Ann. 55, *Republic of Azerbaijan v. Republic of Armenia*, ECHR Application No. 47319/20, Letter from Yeghishe Kirakosyan, Representative of the Republic of Armenia, to Milan Blasko, Third Section Registrar of the European Court of Human Rights, dated 11 Dec. 2020.

¹⁴⁷ *Ibid.*

¹⁴⁸ See also *ibid.*, Ann. 54, *Republic of Azerbaijan v. Republic of Armenia*, ECHR Application No. 47319/20, Letter from Yeghishe Kirakosyan, Representative of the Republic of Armenia, to Milan Blasko, Third Section Registrar of the European Court of Human Rights, dated 30 Nov. 2020.

¹⁴⁹ See e.g. Amnesty International, *Armenia/Azerbaijan: Decapitation and war crimes in gruesome videos must be urgently investigated* (10 Dec. 2020), available at <https://www.amnesty.org/en/latest/press-release/2020/12/armenia-azerbaijan-decapitation-and-war-crimes-in-gruesome-videos-must-be-urgently-investigated/>; United Nations Office of the United Nations High Commissioner for Human Rights, *Nagorno-Karabakh conflict: Bachelet warns of possible war crimes as attacks continue in populated areas* (2 Nov. 2020), available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26464>; Nicola Murray, Deputy Head of the United Kingdom Delegation to the OSCE, *UK statement in response to OSCE Minsk Group Co-Chair statement* (17 Dec. 2020), <https://www.gov.uk/government/news/uk-statement-in-response-to-osce-minsk-group-co-chair-statement>. See also Azerbaijan's Application, paras. 42, 80–81.

¹⁵⁰ Al Jazeera, "Baku to probe alleged war crimes by both Azerbaijan, Armenia" (25 Nov. 2020), available at <https://www.aljazeera.com/news/2020/11/25/baku-to-probe-alleged-war-crimes-by-both-azerbaijan-armenia>, judges' folder, tab 9).

Office announced the detention and charging of Azerbaijani servicemen for crimes including insults to the bodies of Armenian servicemen¹⁵¹. In that December 2020 announcement, available at tab 10 of your folders, the Office also declared that such “criminal acts committed by the servicemen of the Republic of Azerbaijan are unacceptable,” and that “[p]ersons who have committed similar violations will be brought to liability by taking measures provided by law”¹⁵².

14. In contrast, Armenia said, and did, nothing with respect to hate crimes against Azerbaijanis. By May 2021, a non-governmental organization —whose report was cited repeatedly in Armenia’s arguments last week —noted that “[i]t is encouraging that the Azerbaijani authorities are willing and able to investigate and prosecute cases of despoliation of the dead and other violations of the laws and customs of war by members of their own armed forces”¹⁵³. After noting Armenia’s “international obligations to conduct independent, prompt, public and effective investigations” of similar credible allegations, the report noted that “[t]o date, *there is no indication* that the Government of Armenia has complied with these obligations”¹⁵⁴.

15. Nothing had changed by last month, when a Council of Europe report noted that “*both sides ha[d] provided . . . information and videos related to allegations of despoliation of the dead*”, noted that the Azerbaijani Prosecutor General’s Office had “arrested and charged” the four servicemen, but that “[t]he rapporteur is *not aware of any investigation* on the Armenian side”¹⁵⁵. The same was true for allegations of torture and mistreatment of servicemen: the rapporteur received information substantiating allegations on both sides, and notes that “criminal cases have been initiated by the Prosecutor General of Azerbaijan on some of these cases”, but that as of

¹⁵¹ Office of the Prosecutor General of the Republic of Azerbaijan, *Detained Four Servicemen Accused of Insulting Bodies of Armenian Servicemen and Tombstones Belonging to Armenians* (14 Dec. 2020), available at <https://genprosecutor.gov.az/az/post/3272> (judges’ folder, tab 10).

¹⁵² *Ibid.*

¹⁵³ International Partnership for Human Rights and Truth Hounds, “When Embers Burst into Flames: International Humanitarian Law and Human Rights Violations During the 2020 Nagorno-Karabakh War” (May 2021), p. 96, available at https://www.iphronline.org/wp-content/uploads/2021/06/NK_final_report_2021.pdf.

¹⁵⁴ *Ibid.*, emphasis added.

¹⁵⁵ Parliamentary Assembly of the Council of Europe, Committee on Migration, Refugees and Displaced Persons, *Humanitarian consequences of the conflict between Armenia and Azerbaijan*, doc. 15363, (13 Sept. 2021), paras. 55-56, available at <https://pace.coe.int/en/files/29401/html>, emphases added.

September 2021, he is “*not aware of any investigations into any of these incidents* by the Armenian authorities”¹⁵⁶.

16. So we come now to this hearing. Only six days ago, Armenia submitted, as part of its Annexes to the Court, a one-page letter from its Prosecutor General’s Office stating that “six criminal cases were initiated in December 2020”¹⁵⁷. The letter then goes on to say that the cases “were joined into a single proceeding” in June 2021, and that “pre-trial investigation is ongoing”¹⁵⁸. That is *all* that the letter says. It does not say which specific incidents are being investigated, in relation to which victims, or against how many suspects. It does not say which steps, if any, the Armenian authorities have taken to collect, preserve, or examine physical or electronic evidence, interview witnesses, identify suspects, or otherwise investigate these allegations. In short, it provides *no indication* that Armenia is in fact conducting effective investigations, and *no information* about the collection, preservation or analysis of any evidence.

17. In fact, the letter raises far more questions than it purports to answer. For example, if it were indeed true that six cases “were initiated *in December 2020*”¹⁵⁹, why did Armenia not disclose the existence of these investigations to the non-governmental organization that issued its report in *May 2021*, or to the Council of Europe rapporteur who issued his report in *September 2021*? Azerbaijan respectfully submits that Armenia’s silence over the last year speaks volumes louder than the single page it filed six days ago.

18. That single page stands in stark contrast with the detailed information that Azerbaijan has submitted to this Court. Just last week, Armenia’s counsel denigrated Azerbaijan’s efforts as “[a] total of six cases, all of which are supposedly still under investigation or review, and nothing more”¹⁶⁰. Lord Goldsmith demonstrated last week that this description of Azerbaijan’s investigations and prosecutions is false. But it is apparently an accurate portrayal of Armenia’s own circumstances.

¹⁵⁶ *Ibid.*, paras. 54-55, emphasis added.

¹⁵⁷ Armenia’s Ann. 42, Letter from Gevorg Baghdasaryan, Deputy Prosecutor General, Third Class State Counsellor of Justice, Prosecutor General’s Office of the Republic of Armenia, dated 7 Oct. 2021.

¹⁵⁸ *Ibid.*

¹⁵⁹ *Ibid.*

¹⁶⁰ CR 2021/22, p. 27, para. 33 (Murphy).

19. The document at tab 11 of your folder lists similar allegations involving Azerbaijani servicemen and the corresponding criminal investigations and prosecutions that Azerbaijan has undertaken¹⁶¹, and the lengthy explanation of the specific steps that Azerbaijan's prosecutorial authorities have taken is at tab 12 of your folders¹⁶². There is no such information from Armenia.

20. Article 6 of CERD requires that these grave allegations of ethnically motivated offences, including the hate crimes Armenia ignores, must be investigated. Far from demonstrating its compliance, Armenia's letter confirms the grave risk that it will continue to ignore its obligations under CERD, and refuse to conduct effective, transparent investigations into the multiple serious allegations of crimes against Azerbaijanis.

21. Now, when you hear from Armenia's counsel this afternoon, they may claim that the post-conflict context makes it difficult to conduct investigations into their own servicemen. That is no excuse. Within weeks of the Trilateral Statement in November 2020, Azerbaijan had publicly declared its intention to investigate credible allegations, and it has followed through, including completing investigations and referring cases to military court¹⁶³. All that Armenia can offer is a single piece of paper, addressed to no one, supported by no public statement, and submitted only to this Court on the eve of this hearing. That is not nearly enough.

22. The right of Azerbaijanis to effective protection and remedies for the vicious acts of racial discrimination committed during and after the Second Garabagh War cannot be assured unless Armenia takes meaningful and effective steps to preserve and prevent the destruction of evidence.

¹⁶¹ Judges' folder, tab 11, Cross-Reference for Allegations Cited in Armenia's Submissions & Azerbaijan's Investigations and Prosecutions.

¹⁶² Ann. 56, Letter from Elchin Mammadov, First Deputy Prosecutor General, to Elnur Mammadov, Deputy Minister for Foreign Affairs, regarding criminal cases initiated and investigations conducted by the Prosecutor General's Office, dated 6 Oct. 2021, No. 14/çix67-21 (with enclosures).

¹⁶³ Al Jazeera, "Baku to probe alleged war crimes by both Azerbaijan, Armenia" (25 Nov. 2020), available at <https://www.aljazeera.com/news/2020/11/25/baku-to-probe-alleged-war-crimes-by-both-azerbaijan-armenia>, judges' folder, tab 9; Office of the Prosecutor General of the Republic of Azerbaijan, "Detained Four Servicemen Accused of Insulting Bodies of Armenian Servicemen and Tombstones Belonging to Armenians" (14 Dec. 2020), available at <https://genprosecutor.gov.az/az/post/3272>, judges' folder, tab 10; Cross-Reference for Allegations Cited in Armenia's Submissions & Azerbaijan's Investigations and Prosecutions, judges' folder, tab 11.

B. The requested provisional measures are urgently needed to prevent irreparable harm to the rights of Azerbaijanis.

23. Armenia's ongoing failure to take these steps creates an urgent risk of irreparable harm, because the investigation of such acts becomes more difficult with each passing day. As the ICRC has recognized, in the quotation displayed on your screens:

“A criminal investigation must be promptly opened because the collection of evidence is often only possible very soon after an incident. The effects of the passage of time are well known: a crime scene will change, evidence may disappear, memories fade, witnesses can be threatened, suspects may collude. A lack of promptness in the launching of an investigation can thus affect the rights of suspects, victims, and witnesses”¹⁶⁴.

Experience shows — as the ICRC continued — that investigations opened long after the underlying offenses occurred are “likely to face particular obstacles as regards the collection of information and evidence”¹⁶⁵. As the Office of the Prosecutor of the International Criminal Court has recently observed, it is “difficult to ignore the prejudice that past failings” in an investigation can have on the ability of national authorities “to subsequently carry out effective investigations”¹⁶⁶.

24. These considerations apply with particular force in the present context. There is a material risk that suspects could flee to escape prosecution, or that witnesses, including those who are released from military service or returned to their home countries, will be unable to be located. There is likewise a risk that the physical health of the victims, whom Armenia has confirmed sustained serious injuries, would decline over time, as could the recollections of witnesses to the offences. The electronic evidence, including videos or other images shared on social media, may also disappear or be destroyed.

25. Absent the provisional measures Azerbaijan seeks, Armenia's continued refusal to take meaningful steps to investigate ethnically motivated offences, including the hate crimes committed

¹⁶⁴ International Committee of the Red Cross, *Guidelines on Investigating Violations of International Humanitarian Law: Law, Policy, and Good Practice* (Sept. 2019), available at https://www.icrc.org/en/download/file/123868/guidelines_on_investigating_violations_of_ihl_final.pdf. See also United Nations, General Assembly resolution 60/147, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, doc. A/RES/60/147 (16 Dec. 2005), p. 4, para. 3 (b); United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, UN doc. E/ST/CSDHA/12 (1991), p. 17, available at https://www.un.org/ruleoflaw/files/UN_Manual_on_the_Effective_Prevention_and_Investigation%5B1%5D.pdf.

¹⁶⁵ International Committee of the Red Cross, *Guidelines on Investigating Violations of International Humanitarian Law: Law, Policy, and Good Practice* (September 2019), available at https://www.icrc.org/en/download/file/123868/guidelines_on_investigating_violations_of_ihl_final.pdf.

¹⁶⁶ International Criminal Court Office of the Prosecutor, Situation in Iraq/UK Final Report (9 Dec. 2020), para. 432, available at <https://www.icc-cpi.int/itemsDocuments/201209-otp-final-report-iraq-uk-eng.pdf>.

by its servicemen, will make it impossible for Azerbaijanis to ever receive justice for these offences. Azerbaijan seeks this urgent relief to prevent further grave and irreparable prejudice to its rights and those of its people.

26. Thank you, Madam President, honourable Members of the Court, for the privilege of appearing before you. I now respectfully request you to invite Mr. Donovan to address the Court.

The PRESIDENT: I thank Ms Reid for her statement. I now invite Mr. Donald *Francis* Donovan to take the floor.

Mr. DONOVAN:

VI. CONCLUDING OBSERVATIONS

1. Madam President, Members of the Court, it is my honour to address you once again and to close the first round of submissions by the Republic of Azerbaijan.

2. We engage in no hyperbole when we say that, as a result of Armenia's acts and refusals to act, Azerbaijani lives are at stake. Armenia refuses to provide maps of the *hundreds of thousands* of landmines it deliberately deposited on Azerbaijan's territory, with the purpose to cleanse that territory of ethnic Azerbaijanis. Armenia refuses to condemn — indeed, it actively supports — militarized ethno-nationalist groups such as VoMA, who are, as we speak, recruiting, training and preparing Armenians for deadly warfare against Azerbaijanis. Armenia continues to wage a cyber disinformation campaign designed to incite violence and racial hatred against Azerbaijanis. And Armenia fails to collect and preserve evidence of ethnically motivated crimes against Azerbaijanis that it undoubtedly knows about. These are *real* threats generating an *immediate* risk of irreparable prejudice to Azerbaijan's CERD rights. The circumstances require the Court to indicate provisional measures now.

3. Last week, we explained why Armenia's *own* requests for provisional measures fail. Of course, we will not repeat those reasons today. I refer to Armenia's Request solely for this reason: the fact that Armenia's Request must be rejected should not affect the Court's assessment of Azerbaijan's Request in any way. For sure, both States have alleged that the other has violated CERD, both States have requested provisional measures, and both States have requested measures

that relate in some way to the intense hostility that has characterized their relationship since Armenia invaded Azerbaijan in 1991 and seized 20 per cent of its territory¹⁶⁷. Still, the respective requests differ fundamentally in the respects relevant here — their engagement with the settled criteria by which the Court determines whether to indicate provisional measures. The respective requests are not equivalent on their merits, and the Court should not treat them with a false equivalence.

4. In requesting the Court to indicate provisional measures here, Azerbaijan respects the rigorous and disciplined approach this Court has customarily taken to exercising its Article 41 authority. Indeed, we embrace that approach. Azerbaijan has identified, with the requisite *specificity* and *precision*, why *each* measure that it seeks satisfies the settled criteria for indicating provisional measures. Professor Lowe, Ms Amirfar, Professor Boisson de Chazournes and Ms Reid made out that showing this morning.

5. In the balance of my time, I want to walk the Court through each measure requested by Azerbaijan for the purpose of making two points. *First*, that each measure is directed to real threats of irreparable prejudice, based firmly on specific facts and concrete circumstances. *Second*, that if indicated, none of the measures will visit any prejudice on Armenia's rights. I will take each measure in turn.

6. *First*, Azerbaijan requests that Armenia provide comprehensive and accurate information on the location and characteristics of landmines in Azerbaijan. As Ms Amirfar explained, these are landmines that Armenia has deposited to ethnically cleanse Azerbaijan's territory of Azerbaijanis and to prevent them from safely returning to their homeland.

7. Distilling the request down, this is specific information, which Azerbaijan has precisely identified, which Armenia possesses, which Armenia *inexcusably* refuses to provide, and which because Armenia refuses to provide it, Azerbaijanis stand at imminent risk of death and bodily injury. This is a textbook case warranting provisional measures. Every day, every minute, every second, even as we stand here today, a landmine could explode, and a life could be lost.

8. Conversely, there is no prejudice whatsoever to Armenia in turning over its landmine maps and information. Armenia cannot assert that it has a legitimate right that is served by withholding

¹⁶⁷ Azerbaijan's Application, paras. 7-10.

lifesaving information. And surely it would not be legitimate for Armenia to continue to withhold the maps and information because they might at some point be useful as a bargaining chip.

9. Let there be no doubt: the information Azerbaijan needs already exists and is in Armenia's possession. That point has been conceded by Armenia's Prime Minister¹⁶⁸. The international community has repeatedly called on Armenia to turn them over. There can be no confusion about what Azerbaijan is asking for, and there can be no reason for Armenia to continue to hold them. Because Armenia steadfastly refuses to do so, it should be so ordered.

10. *Second*, Azerbaijan requests that Armenia cease and desist from planting further landmines in Azerbaijan's territory. This is specific conduct, which Armenia has been *caught red-handed* committing even as recently as May 2021¹⁶⁹, months after active hostilities ended and the formerly occupied territories were liberated. And it is specific conduct, which Armenia has no right to repeat.

11. We are at a completely unacceptable juncture. Armenia has conceded that it has laid landmines, but at the same time, it has given *no* formal assurances that it will refrain from depositing any more on Azerbaijan's territory. Even if we hear Armenia deny this afternoon that it is continuing to deposit landmines in Azerbaijan or argue that its May 2021 efforts were isolated, in the absence of a public, formal undertaking from the Agent of Armenia this afternoon, made with the intention that Armenia will be "bound according to its terms"¹⁷⁰, and of which the Court could take note, Armenia must be ordered to stop. Respectfully, those are the only options available because the imminent risk of death and bodily injury from even one additional landmine being deposited is simply too grave to go unaddressed.

12. *Third*, Azerbaijan requests that organizations operating in Armenia, such as VoMA, be prevented from inciting racial hatred and racially motivated violence targeted at Azerbaijanis.

¹⁶⁸ Azerbaijan's Request, para. 12, citing Ann. 33, Extract from Speech by Nikol Pashinyan, posted on YouTube channel of NEWS AM (13 Jun. 2021), <https://www.youtube.com/watch?v=7lbPymz14zQ> (certified translation).

¹⁶⁹ Azerbaijan's Request, para. 15, citing Ministry of Foreign Affairs of the Republic of Azerbaijan, No. 191/21, Information of the Press Service Department of the Ministry of Foreign Affairs of the Republic of Azerbaijan on the next provocation of the armed forces of Armenia along the border in the direction of the Kalbajar region (En/Ru) (2021), available at <https://mfa.gov.az/en/news/no19121-information-of-the-press-service-department-of-the-ministry-of-foreign-affairs-of-the-republic-of-azerbaijan-on-the-next-provocation-of-the-armed-forces-of-armenia-along-the-border-in-the-direction-of-the-kalbajar-region-enru>.

¹⁷⁰ *Nuclear Tests (Australia v. France)*, Judgment, I.C.J. Reports 1974, p. 253, para. 43. See also *Frontier Dispute (Burkina Faso/Republic of Mali)*, Judgment, I.C.J. Reports 1986, p. 554, paras. 39-40.

13. Let's be clear about this specific group. VoMA, as Professor Boisson de Chazournes explained, is a hate group operating in broad daylight. It is not operating in the shadows and there is no difficulty in identifying it. It has a website and several social media channels, all of which are proudly peppered with photographs of individuals holding and training with assault weapons. VoMA openly considers Azerbaijanis to be *racially inferior* to Armenians and a "threat". It is operating *warfare training centres* for civilians in Armenia. Not only does Armenia refuse to condemn it, VoMA has been rewarded for its work with the Armenian armed forces¹⁷¹.

14. Thus, Azerbaijan's requested measure is precisely targeted at ordering Armenia to prevent a specific group, and other specific hate groups like it, from spewing racial hatred and inciting violence toward Azerbaijanis. Unless indicated, Azerbaijanis will be subject to an ever-increasing risk of violence, armed attacks, or worse.

15. Conversely, again, Armenia would suffer no prejudice from this measure. In fact, Armenia's own laws contemplate that it will clamp down on virulent hate groups like VoMA, consistent with its CERD Article 4 (b) obligations. Armenia previously *assured* the CERD Committee that its domestic law allows it to take steps "to liquidate [an] organization" if that organization's activities are "aimed at incitement of racial hatred"¹⁷². The obvious problem, of course, is that Armenia has taken no such steps with respect to VoMA, POGA or any other hate group. That is not because doing so would encroach on free expression or free assembly or other rights. It is because Armenia endorses the groups' anti-Azerbaijani activities, as its past co-operation with VoMA makes clear.

16. *Fourth*, Azerbaijan requests that Armenia cease and desist its ongoing anti-Azerbaijani cyber disinformation campaign. Here again, this is specific conduct that Armenia has been *caught red-handed* doing. Twitter found that Armenia extensively manipulated its platform "in order to advance narratives that were targeting Azerbaijan"¹⁷³. Professor Boisson de Chazournes took you

¹⁷¹ Ann. 35, Voxj Mnalu Arvest (VoMA) Social Media Posts (certified translation).

¹⁷² CERD Committee, Consideration of reports submitted by States parties under Article 9 of the Convention, Seventh to eleventh periodic reports of Armenia, doc. CERD/C/ARM/7-11 (19 Feb. 2016), para. 52.

¹⁷³ Azerbaijan's Request, para. 19, citing Twitter Safety, "Disclosing networks of state-linked information operations", Twitter, Inc. (23 Feb. 2021), available at https://blog.twitter.com/en_us/topics/company/2021/disclosing-networks-of-state-linked-information-operations-.html; emphasis added.

through all the evidence — thousands upon thousands of tweets from fake accounts, all tied to Armenia.

17. Here again, Azerbaijan is seeking a narrowly tailored order for Armenia to stop the specific unlawful acts which it has been caught out doing. And here again, unless those measures are indicated, Azerbaijanis will be subject to an ever-increasing risk of racial hatred, violence, or worse.

18. It simply cannot be said that Armenia has any right or credible interest to protect by fomenting racial hatred online through fake news and disinformation. Nor can it be said that Armenia will be prejudiced by an order that it cease and desist its cyber disinformation campaign. The requested measure is restricted to identified speech that CERD prohibits — speech that directly incites racial hatred and violence — and that Armenia has disseminated strategically, through fake accounts, to have maximum impact.

19. *Fifth*, Azerbaijan requests an order that Armenia collect and preserve evidence related to ethnically motivated crimes against Azerbaijanis. This is not a broad and sweeping evidence preservation order that will prejudice Armenia. This is narrowly tailored to allegations of ethnically motivated crimes, against Azerbaijanis, that Armenia *is aware of* — that it knows about. Given that a number of these crimes were committed in the 2020 hostilities and subsequent months, the temporal focus further narrows the compass.

20. With *specific* knowledge of allegations of *specific* crimes, Armenia cannot suggest that the order would not provide sufficient guidance to permit compliance. But as Ms Reid explained, that is precisely what Armenia is doing. And unless the measure is indicated, there will be no chance of holding perpetrators to account, and Azerbaijani victims of crime will be irreparably deprived of remedies in accordance with law.

21. *Finally*, and very briefly, on non-aggravation. Because Azerbaijan's Request meets the conditions for the indication of specific provisional measures, the Court should exercise its power to indicate the non-aggravation measure sought by Azerbaijan in its Request. Given the fundamental nature of the rights that are threatened by Armenia's CERD violations, the circumstances more than justify a non-aggravation measure.

22. Madam President, Members of the Court, Azerbaijanis stand at risk of death, serious injury and violence at any minute, all of which could be mitigated, if not prevented entirely, by the provisional measures requested by Azerbaijan.

23. We may hear from Armenia this afternoon that Azerbaijan last week insisted upon a showing that CERD rights must be shown to be at *imminent* risk of *irreparable* prejudice by a *real* threat in *specific* circumstances. We stand firmly behind that insistence. We welcome the Court examining Azerbaijan's Request, as we have no doubt it will Armenia's, with the discipline that it customarily exercises, and that is because we are confident that each measure requested by Azerbaijan meets that standard.

24. I thank the Court for your attention. This concludes the first round of Azerbaijan's oral submissions on its Request.

The PRESIDENT: I thank Mr. Donovan, whose statement brings to an end the first round of oral argument of Azerbaijan, as well as this morning's sitting. The Court will meet again this afternoon, at 4 p.m., to hear the first round of oral argument of Armenia.

The sitting is adjourned.

The Court rose at 12.15 p.m.
